

EXHIBIT 3

1 IN THE UNITED STATES BANKRUPTCY COURT

2 FOR THE NORTHERN DISTRICT OF TEXAS

3 DALLAS DIVISION

4 _____
5 IN RE:)
6 HIGHLAND CAPITAL) CHAPTER 11
MANAGEMENT, L.P.,)
7 Reorganized Debtor.) CASE NO. 19-34054-SGJ11
8 _____)
9
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11
12

13 REMOTE ORAL DEPOSITION OF

14 BH EQUITIES, LLC

15 BY AND THROUGH ITS DESIGNATED REPRESENTATIVE

16 DUSTIN THOMAS

17 Des Moines, Iowa

18 Thursday, August 4, 2022

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21
22
23 REPORTED REMOTELY BY:

24 JANICE K. McMORAN, CSR, RDR, CRR, TCRR

25 JOB NO. 213053

1 BH EQUITIES, LLC - D. MILLER 2 appreciate that. 3 A. Thank you. 4 Q. Can you just state your name for the 5 record, sir? 6 A. Yeah. My name is Dustin Thomas. 7 Q. Okay. Mr. Thomas, are you employed 8 today? 9 A. I am. 10 Q. By whom? 11 A. That's not as easy as it might sound. 12 But I work for BH Equities. We have a parent 13 who I'm actually employed through with a master 14 services agreement. 15 Q. Okay. 16 A. And the parent is BH Management 17 Services. 18 Q. And do you have a title? 19 A. I do. I'm managing director of 20 capital markets and investor relations. 21 Q. Have you ever been deposed before? 22 A. I have one other time. 23 Q. Was it in a personal capacity or in a 24 business? 25 A. It was in a corporate capacity as a	Page 10 1 BH EQUITIES, LLC - D. MILLER 2 just information witness. 3 Q. And how long ago was that? 4 A. Approximately three years, three and 5 a half. 6 Q. So really simple ground rules here. 7 This is a deposition where I am going to ask 8 questions and you'll provide answers. It's 9 important that you allow me to finish my 10 question before you begin an answer. Is that 11 fair? 12 A. That is fair. 13 Q. And I will attempt to do the same and 14 allow you to finish your answer before I begin 15 a question, but if I fail to do so, will you 16 let me know that? 17 A. I will do my best. 18 Q. If there's something that I ask that 19 you don't understand, will you let me know 20 that? 21 A. I will. 22 Q. If you need a break at any time, feel 23 free to let me know and I'll do my best to 24 accommodate you. I only request that you not 25 seek a break while a question is pending. Is
Page 12 1 BH EQUITIES, LLC - D. MILLER 2 that fair? 3 A. That is fair. 4 Q. Okay. From time to time, a lawyer 5 might object to a question. Allow the lawyers 6 to do their job and figure out what to do with 7 the objection before you begin your answer. Is 8 that understood? 9 A. That is understood. 10 Q. Okay. So what are your duties and 11 responsibilities as a managing director of BH 12 Equities? 13 A. I -- BH Equities invests in various 14 partnerships of real estate, and when we 15 invest, I help with the structure of those, 16 both debt and equity investment. And if we 17 have outside capital, I'm a liaison for that 18 outside capital. 19 Q. So that -- is it fair to say that the 20 nature of the business of BH Equities is to 21 invest in real estate partnerships, or at least 22 the primary business? 23 A. I would say that, yeah, alongside 24 sourcing investment opportunities for partners. 25 Q. How long have you been with BH	Page 13 1 BH EQUITIES, LLC - D. MILLER 2 Equities? 3 A. Counting on my fingers, sorry. A 4 little over six years. 5 Q. And were you employed before being 6 employed by BH Equities? 7 A. I was. 8 Q. Can you describe just briefly your 9 professional background? 10 A. Yeah. Prior to BH Equities, I was a 11 partner in a private equity fund acquiring 12 small businesses of, you know, 5 to 10 million 13 of EBITDA. And prior to that, I was in private 14 investment on the balance sheet of a power 15 company. 16 Q. Did you graduate from college? 17 A. I did. 18 Q. Where did you go to college? 19 A. Simpson College, a liberal arts 20 school in, Indianola, Iowa. 21 Q. Do you have any graduate degrees? 22 A. I do. I have a master's in business 23 from the University of Iowa. 24 Q. Do you hold any licenses or 25 certificates?

1 BH EQUITIES, LLC - D. MILLER 2 A. I do. I hold the chartered financial 3 analyst designation and the chartered 4 alternative investment analyst designation. 5 Q. Within the BH Equities corporate 6 structure, to whom do you report? 7 A. I report to Travis Sheets, our 8 general counsel. 9 Q. Have you spoken with -- are you 10 familiar with the entity called HCRE or what 11 was known as HCRE? 12 A. Only through our transactions. 13 Q. And have you spoken with anybody that 14 you believed was acting on behalf of HCRE in 15 connection with today's deposition? 16 A. I have not. 17 Q. Do you know whether anybody acting on 18 behalf of BH Equities has communicated with 19 anybody acting on behalf of HCRE concerning 20 today's deposition? 21 A. Not to my knowledge. 22 Q. I'd like to -- so from time to time 23 today, I'm going to ask my assistant, La Asia 24 Carty, to put some documents on the screen. 25 You know, this is not a test. Some of the	Page 14 1 BH EQUITIES, LLC - D. MILLER 2 documents that we'll put up there, obviously, 3 are very lengthy. I'm going to show you 4 portions of documents. It would be much easier 5 if we were in a room together. So that if you 6 think that there's portions of a document that 7 you need to read in order to -- in order to 8 have context, in order to kind of fully 9 understand the questions that I'm asking, will 10 you let me know that? 11 A. I will. 12 Q. Okay. So the first document that I'd 13 like to put up on the screen, which we've 14 marked as, let's call it BH-1, is the subpoena, 15 the amended subpoena that Highland served in 16 this case. 17 And before we get to that, actually, 18 I just want to deal with a few definitions. 19 As I mentioned at the beginning I 20 represent Highland Capital Management, L.P. 21 I'm going to try to refer to that entity as 22 HCMLP. Is that fair? 23 A. Yep, I understand that. 24 Q. Okay. And then there's another 25 entity that was a party to the amended and
1 BH EQUITIES, LLC - D. MILLER 2 restated LLC agreement that we'll talk about in 3 a few minutes that was called HCRE Partners, 4 LLC. I think you told me that you're familiar 5 with that entity, right? 6 A. Yes. 7 Q. And if I use the -- if I use the term 8 HCRE, that's the entity that I'll be referring 9 to, okay? 10 A. Uh-huh. 11 Q. And you're familiar with an entity 12 called SE Multifamily Holdings, LLC; is that 13 right? 14 A. Yeah. 15 Q. All right. I may refer to that 16 either as SE Multifamily or SEM. Is that fair? 17 A. Yes. 18 Q. Okay. And then I'm going to refer to 19 the entity either that you're employed by or 20 that you have a shared services agreement with 21 as either BH or BH Equities, okay? 22 A. Understood. 23 (Exhibit 1 marked.) 24 Q. Okay. So let's go back to the 25 subpoena. Have you seen this document before?	Page 16 1 BH EQUITIES, LLC - D. MILLER 2 A. I have. 3 Q. Okay. And is it your understanding, 4 are you aware that you're giving testimony 5 today in your capacity as a corporate 6 representative of BH Equities? 7 A. Yes, I am aware. 8 Q. Okay. 9 MR. MORRIS: Can we go to, I guess 10 it's page 2 of the attachment? Yeah, 11 right there. 12 BY MR. MORRIS: 13 Q. Have you seen these topics before 14 today? 15 A. Yes, sir. 16 Q. And are you prepared to testify on 17 behalf of BH Equities as to each of these 18 topics? 19 A. I am. 20 Q. Did you do anything to prepare for 21 today's deposition? 22 A. I did. 23 Q. What did you do? 24 A. I reviewed the bulk of our discovery. 25 And, pardon me, the legal terms are not second

1 BH EQUITIES, LLC - D. MILLER 2 nature to me. And then I talked with Matt 3 Mulcahy, as our BH Equities controller as well, 4 on a couple of clarifications. 5 Q. And when you used the phrase "the 6 bulk of discovery," you're talking about the 7 documents that BH Equities produced to Highland 8 in response to the subpoena. Do I have that 9 right? 10 A. Correct. 11 Q. Okay. And can you tell me for the 12 record who -- it's Matt Mulcahy? 13 A. Mulcahy, yes. 14 Q. Okay. Who is Mr. Mulcahy? 15 A. Mr. Mulcahy is the controller for BH 16 Equities and its, you know, various investment 17 subsidiaries. 18 Q. Did Mr. Mulcahy play any role in 19 connection with the SE Multifamily transaction? 20 A. He would have coordinated certain 21 accounting matters. 22 Q. Other than Mr. Mulcahy and BH 23 Equities' counsel, did you speak with anybody 24 else to prepare for today's deposition? 25 A. No, not directly.	Page 18 1 BH EQUITIES, LLC - D. MILLER 2 Q. Did you speak with or communicate 3 with anybody indirectly? 4 A. Only review of e-mails that would 5 have been part of the discovery package that we 6 shared. 7 Q. Okay. So looking at the screen, 8 we're just going to take them one at a time. 9 Do you see topic 1 there? 10 A. Yes, sir. 11 Q. Have you reviewed, to the best of 12 your knowledge, all of the written 13 communications between BH Equities and either 14 HCRE or HCMLP relating to the amended 15 agreement? 16 A. To the best of my knowledge, I have. 17 Q. Okay. And there's another phrase 18 that I want to get out there. The subpoena 19 defined amended LLC agreement as the agreement 20 that was entered into on March 15th, 2019. Are 21 you aware of that? 22 A. I am. 23 Q. All right. I may from time to time 24 today use the phrase "amended agreement," and 25 that's the agreement that I'll be referring to.
Page 20 1 BH EQUITIES, LLC - D. MILLER 2 Do you understand that? 3 A. I do. 4 Q. Okay. So other than -- other than 5 your conversations with counsel and Mr. Mulcahy 6 and your review of the e-mails that BH 7 produced, that's the totality of your 8 preparation for topic number 1? Do I have that 9 right? 10 A. Alongside with reading the agreement 11 several times. 12 Q. Okay. I appreciate that. 13 Topic number 2 is Schedule A, 14 including all communications with either HCMLP 15 or HCRE concerning that Schedule A. 16 Do you have an understanding of what 17 Schedule A is? 18 A. I do. 19 Q. And do you believe that you are 20 adequately prepared to testify as to that 21 topic? 22 A. I do. 23 Q. Is there anybody that you think you 24 should have spoken to about that topic that you 25 kind of forgot to or that you wish you had?	Page 21 1 BH EQUITIES, LLC - D. MILLER 2 A. No. No. I came prepared. 3 Q. Okay. Topic number 3 concerns your 4 interests in SE Multifamily, including 5 distributions or allocations made to you. And, 6 as you may know, "you" is defined in the 7 subpoena as BH Equities. Are you prepared to 8 testify as to that topic? 9 A. I am. 10 Q. And, again, same answer for all four 11 topics, the scope of document review are the 12 documents that BH produced, correct? 13 A. Correct. 14 Q. Okay. And topic number 4 -- there's 15 a reference to paragraph 5 of the response. Do 16 you see that at the end of topic 4? 17 A. Yes. 18 Q. Okay. Have you seen that response? 19 A. I believe I have. 20 MR. DOHERTY: Just one second. Could 21 we see what the response is defined as in 22 the subpoena, Mr. Morris? 23 MR. MORRIS: Sure, we can scroll up. 24 MR. DOHERTY: Pardon me. I forgot 25 which one it is.

1 BH EQUITIES, LLC - D. MILLER 2 MR. MORRIS: No problem. It's just 3 NexPoint's written response to the claim 4 objection. 5 MR. DOHERTY: Okay. Thank you, 6 Mr. Morris. 7 BY MR. MORRIS: 8 Q. All right. So let's go back to the 9 topic. Mr. Thomas, have you personally ever 10 seen the response? 11 A. I believe that was provided to me, 12 and I did review it. 13 Q. Okay. And BH Equities is aware today 14 of HCRe's contention as set forth in paragraph 15 5, right? 16 A. I believe so. 17 Q. Do you know when BH Equities first 18 learned -- actually, I'm going to use a defined 19 term just to make our lives simpler. The 20 quotation that we have in topic 4 says, "All 21 facts and communications concerning HCRe's 22 contention that" -- and then there's a 23 quotation. 24 Do you see that? 25 A. Yes, sir.	Page 22 1 BH EQUITIES, LLC - D. MILLER 2 Q. If I -- if I use the phrase 3 "contention," will you know that I'm meaning 4 that very quotation right there? 5 A. I can understand that, yes. 6 Q. Okay. So when did -- when did BH 7 Equities first learn of HCRe's contention? 8 A. I don't know for sure exactly when we 9 first learned. I couldn't give you an exact 10 date as to when corporately we learned about 11 that contention. But we have been aware of it. 12 Q. Can you tell me what year BH Equities 13 first learned of the contention? 14 A. I don't know exactly when we would 15 have learned of that contention, no. 16 Q. Okay. I'll come back to this with 17 more specificity later on. 18 MR. MORRIS: Let's take this down. 19 BY MR. MORRIS: 20 Q. And let's kind of cut to the chase a 21 little bit. BH Equities entered into the 22 amended agreement with HCMLP and HCRe and 23 Liberty on March 15, 2019, correct? 24 A. Correct. 25 Q. Okay. And you're aware that that
Page 24 1 BH EQUITIES, LLC - D. MILLER 2 agreement was effective as of August 23rd, 3 2018, correct? 4 A. I am. 5 Q. Okay. Did you personally have any 6 role in the negotiation of the amended 7 agreement? 8 A. I was involved in the back and forth 9 and working with parties during the -- that 10 time period to -- as the agreement was -- was 11 going back and forth. 12 Q. Were there any particular issues that 13 you were personally focused on? 14 A. Yes. The allocation -- the biggest 15 issue was getting capital back to the parties 16 prior to any allocations on percentages or 17 those things that I was focused on. 18 Q. Can you identify -- when did you 19 first get involved in this project? Do you 20 recall? 21 A. Prior to the closing of the purchase 22 of the assets, I would have been involved. 23 Q. And when was the closing? 24 A. I believe it was September 26th of 25 2018.	Page 25 1 BH EQUITIES, LLC - D. MILLER 2 Q. Can you identify for me all of the 3 people acting on behalf of BH Equities that 4 were, you know, primarily responsible for 5 negotiating the amended agreement? 6 A. Myself, Ben Roby, and Joanna 7 Zabriskie, our president and CEO, would have 8 been the most actively involved. 9 Q. Did you have legal counsel involved 10 in the review and negotiation or drafting of 11 the amended agreement? 12 A. We did. 13 Q. And who was that? 14 A. Nick Roby, previously Davis Brown, 15 which is now part of Dentons. 16 Q. So in addition to yourself and the 17 president and Ben, you had outside counsel? Do 18 I have that right? 19 A. Yes. 20 Q. Is there anybody else within BH 21 Equities who was involved in the negotiation, 22 drafting, or review of the amended agreement? 23 A. Off the top of my head, I'm sure 24 Travis Sheets would have been copied, at least 25 on correspondence.

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1 BH EQUITIES, LLC - D. MILLER
2 Q. Now, there were three other parties
3 to the amended agreement, right? Liberty,
4 HCRE, and HCMLP. Do I have that right?
5 A. Yes, that's my understanding.

6 Q. Are you able to identify for me the
7 people who were representing the interests of
8 each of those parties and the drafting,
9 negotiation, and execution of the amended
10 agreement? And if you want me to take them one
11 at a time, I'm happy to.

12 A. Yeah, that would be...

13 Q. From BH Equities' perspective as you
14 were negotiating this agreement, did BH
15 Equities form a view that HCMLP and HCRE and
16 Liberty were related parties?

17 A. Yes.

18 Q. And did -- was this more of a
19 bilateral negotiation between BH Equities on
20 the one hand and HCMLP and HCRE and Liberty on
21 the other hand?

22 A. Yes.

23 Q. Can you identify the people who were
24 working on behalf of -- withdrawn.

25 Based on that, for convenience I'm

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1 BH EQUITIES, LLC - D. MILLER
2 going to use the phrase "Highland" to refer
3 to -- withdrawn.
4 I'm going to use the phrase
5 "Highland" to refer to HCRE, HCMLP, and
6 Liberty. Is that okay?

7 A. That's okay, yes.

8 Q. Okay. Can you identify for me the
9 individuals who were representing the interests
10 of Highland in connection with the negotiation
11 of the amended agreement?

12 A. I can identify my primary
13 correspondence during that time. Is that
14 acceptable?

15 Q. Sure.

16 A. I was primarily corresponding with
17 Paul Broaddus. Freddy Chang was cc'd on much
18 of the correspondence and occasionally chimed
19 in. And then only by copy of e-mail, I
20 believe, Wick Phillips was the law firm
21 representing and working with them.

22 Q. And was Wick Phillips involved in the
23 drafting, negotiation, or review of the amended
24 LLC agreement, to the best of your knowledge?

25 A. I can't say for certain because I

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1 BH EQUITIES, LLC - D. MILLER
2 didn't correspond with them directly.

3 Q. Fair enough.

4 How about Matt McGraner? Is he
5 somebody who was involved on behalf of Highland
6 in the negotiation, drafting, and review of the
7 amended agreement?

8 A. I did not have direct correspondence
9 with Mr. McGraner on the topic.

10 Q. Do you know -- was there anybody
11 involved in the negotiation or drafting of the
12 agreement who BH Equities believed was looking
13 out exclusively for the interests of HCMLP?

14 A. As -- you know, kind of in the
15 framing of your question, we were viewing them
16 as a bilateral entity. So -- so I can't say
17 for certain if they were or weren't as to
18 who -- who was looking after what interest.

19 Q. And that's all I'm asking for is the
20 perspective of BH Equities, was there anybody
21 from BH Equities' perspective that BH Equities
22 believed was looking out only for HCMLP's
23 interests?

24 A. Again, we viewed them as related
25 parties and coordinating amongst themselves as

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1 BH EQUITIES, LLC - D. MILLER
2 necessary. But we viewed it as a bilateral
3 negotiation, as you framed it.

4 Q. Did you ever -- to the best of your
5 knowledge, did BH Equities ever communicate
6 with anybody who claimed to represent the
7 exclusive interests of Liberty?

8 A. Not to my knowledge.

9 Q. And to the best of BH Equities'
10 knowledge, did anybody ever represent to BH
11 Equities that there was an individual who was
12 looking out for the exclusive interests of
13 HCRE?

14 A. Again, we lumped HCRE and HCM kind of
15 together as the two -- the two large parties
16 kind of, you know, related and things. So
17 exclusively, no, given that context.

18 Q. Okay. Are you familiar with the
19 phrase "Project Unicorn"?

20 A. I am.

21 Q. Do you have an understanding of what
22 that phrase means?

23 A. Yes.

24 Q. And what's your understanding of the
25 phrase "Project Unicorn"?

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1 BH EQUITIES, LLC - D. MILLER
2 A. Project Unicorn was a marketing
3 phrase for a portfolio of -- I believe it was
4 26 properties marketed by -- by CBRE as
5 Starwood was -- as Starwood or Starwood
6 affiliates were selling these properties, and
7 they were purchased by SE Multifamily LLC.

8 Q. All right. Do you know why this
9 project was given the name Project Unicorn?

10 A. No, sir.

11 Q. Sometimes people use the word unicorn
12 to refer to something unique. Did you ever
13 participate in any discussions with anybody
14 where they suggested that they were, you know,
15 unique or rare features of a transaction of
16 this type?

17 A. My understanding is the designation
18 was given by the marketing firm, which would be
19 in line with precedent that the investment bank
20 or brokerage firm would give the project its
21 name. And it's typically under -- included in
22 the NDA and things like that.

23 Q. Okay. Do you know when BH Equities
24 first learned of Project Unicorn?

25 A. Specifically, no. It would have been

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1 BH EQUITIES, LLC - D. MILLER
2 the summer of 2018.
3 Q. Do you know how BH Equities learned
4 about Project Unicorn?

5 A. I believe it was introduced to us
6 through the -- I'm going to use your term
7 prior, kind of Highland broadly, the HCRE, HCM,
8 you know, group.

9 Q. Is BH Equities aware that HCRE and
10 HCMLP entered into an LLC agreement with
11 respect to SE Multifamily in August of 2018?

12 A. We were given copies of that at some
13 point along the way, yes.

14 Q. Are you aware that HCRE, HCMLP, and
15 certain other borrowers obtained a loan from
16 KeyBank in September 2018 related to Project
17 Unicorn?

18 A. Yes.

19 Q. Did BH Equities have anything to do
20 with the KeyBank loan?

21 MR. GAMEROS: Objection -- objection,
22 form.

23 BY MR. MORRIS:

24 Q. That's fair. Let me restate the
25 question, Mr. Thomas. BH Equities is not a

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1 BH EQUITIES, LLC - D. MILLER
2 signatory to the KeyBank loan, is it?

3 A. That's correct.

4 Q. Okay. Did BH Equities provide any
5 services or any resources, including capital of
6 any kind, in connection with the negotiation or
7 drafting of the KeyBank loan?

8 A. That's a bit nuanced. There was
9 underwriting and things like that done on
10 behalf of all parties involved. Underwriting,
11 diligence, those kinds of things, which I'm
12 certain was used as part of the negotiation
13 work with KeyBank to secure the loan.

14 Q. Were you working with Highland on
15 obtaining the KeyBank loan?

16 A. Again, it's nuanced. Directly
17 working as an agent or things like that, no.

18 Q. Were they keeping you informed?

19 A. In parts, yes. It was an important
20 capitalization to the transaction.

21 Q. Is it BH Equities' understanding that
22 the KeyBank loan was a necessary component to
23 the closing of the transaction on September
24 26th?

25 A. Yes.

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1 BH EQUITIES, LLC - D. MILLER

2 Q. SEC Multifamily -- withdrawn.

3 To the best of BH Equities'
4 knowledge, SE Multifamily could not have
5 financed the acquisition of the 26 properties
6 at the end of September without obtaining the
7 KeyBank loan; is that fair?

8 A. That's my understanding.

9 Q. Did there come a time when
10 BH Equities began to negotiate with Highland
11 about a potential participation interest in SE
12 Multifamily?

13 A. Yeah, it was always expected we would
14 participate in the -- in the LLC through
15 capital and, you know, sharing of return of
16 capital and profits and things, yes.

17 Q. Okay. Focusing solely on 2018, did
18 BH Equities loan any money to SE Multifamily in
19 the year 2018?

20 A. Not to my knowledge.

21 Q. Do you know if BH Equities loaned
22 money to anybody in connection with Project
23 Unicorn in 2018?

24 A. Not -- not to my knowledge.

25 Q. And as opposed to loans, do you know

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Page 35

1 BH EQUITIES, LLC - D. MILLER
2 whether BH Equities made any investment in SE
3 Multifamily in the year 2018?

4 A. Yes, we did.

5 Q. Okay. Can you describe for me the
6 investment that BH Equities made in SE
7 Multifamily in 2018?

8 A. The investment in totality was
9 approximately 21.5 million, I believe.

10 Q. And when you say it was made in 2018,
11 is that because the agreement was ultimately
12 made effective as of August 2018, or was the
13 actual cash -- well, withdrawn. Let me ask
14 this.

15 You mentioned a \$21 million
16 investment. Is that an actual cash outlay by
17 BH Equities?

18 A. Yes.

19 Q. And where did that money go, do you
20 know?

21 A. If went to purchase the properties.

22 Q. And do you know when BH Equities made
23 the \$21 million investment?

24 A. It would have been in tranches
25 between the -- and, again, I'm using air quotes

1 BH EQUITIES, LLC - D. MILLER
2 here -- the broad Highland group entities,
3 HCRE, HCM, et cetera. There are expenses
4 leading up such as, you know, earnest money,
5 loan app fees, those kind of things, and we
6 would have likely shared in parts of that. And
7 then by the time the transaction closed on
8 September 26th, the remaining funds would have
9 been invested, likely funded through title,
10 potentially a little bit directly to a bank
11 account. But the bulk would have gone through
12 title or to pay for pre- -- preclosing
13 expenses.

14 Q. And so do I have this right, that BH
15 Equities laid out the \$21 million in 2018
16 before there was an actual written agreement?

17 A. That is correct.

18 MR. DOHERTY: Objection, form.

19 BY MR. MORRIS:

20 Q. Was the \$21 million investment the
21 subject of negotiation? Like, how was that
22 number arrived at?

23 A. It was -- it was a number used to
24 close the transaction, and all parties were
25 aware that BH was investing that money as a

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1 BH EQUITIES, LLC - D. MILLER
2 member of SE Multifamily at that time. So it
3 was a known fact amongst all the parties
4 participating.

5 Q. And when you use the phrase
6 "parties," are you talking about the parties
7 that ultimately became members of SE
8 Multifamily or something else?

9 A. Yes. Yeah, the additional members
10 and parties there.

11 Q. Do you know if KeyBank was aware of
12 the role that BH Equities was playing?

13 A. I don't know specifically, as we
14 weren't involved. I would assume so, though.

15 Q. Prior to 2018, had any agreement been
16 reached on the nature of the interest that
17 BH Equities was going to receive in exchange
18 for its \$21 million investment?

19 A. I don't believe there was anything
20 formal fully agreed to at that time.

21 Q. BH Equities ultimately obtained a
22 6 percent interest in SE Multifamily, right?

23 A. It's more nuanced than that. I'm
24 sorry, I don't mean to avoid the question, but
25 given the -- the written how capital flows and

1 BH EQUITIES, LLC - D. MILLER
2 things like that, it's more nuanced than just
3 the 6 percent. So I -- so I wouldn't say that
4 we only had a 6 percent interest, so to speak.

5 Q. How would you characterize
6 BH Equities' interest in SE Multifamily? How
7 would you describe it?

8 A. The expectation was we would give
9 capital back, and then the residual interest
10 thereafter was what was up for negotiation.

11 Q. What do you mean, it was up for
12 negotiation?

13 MR. DOHERTY: Objection. And I don't
14 want to make it -- John, you can tell me
15 not to say anything. I think I see a
16 disconnect, but if you want me to let you
17 proceed, I will.

18 MR. MORRIS: Yeah, go ahead, Casey.
19 I appreciate it. Go ahead.

20 MR. DOHERTY: Okay. I think there
21 might be a disconnect on -- with at least
22 for me on the time -- the time frame for
23 the question, about after the amended
24 agreement or before about --

25 MR. MORRIS: Ah, okay.

1 BH EQUITIES, LLC - D. MILLER 2 MR. DOHERTY: That's just my humble 3 suggestion there, but I'll -- okay. All 4 right. 5 MR. MORRIS: I appreciate that. 6 BY MR. MORRIS: 7 Q. In the amended agreement as executed, 8 did BH Equities obtain a 6 percent equity 9 interest in SE Multifamily? 10 A. Again, it's more nuanced than that. 11 We have six -- we have an interest of 6 percent 12 after the return of capital and those things, 13 as the agreement was written. 14 Q. Okay. So after capital is returned, 15 SE Multifamily -- withdrawn. 16 After the original capital investment 17 is returned, BH Equities would have a 6 percent 18 interest in SE Multifamily. Do I have that 19 right? 20 A. Yes, that's a correct 21 characterization. 22 Q. Okay. And at what point in time was 23 an agreement reached that BH Equities would 24 receive 6 percent of SE Multifamily after the 25 return of the initial capital? Was that done	Page 38 1 BH EQUITIES, LLC - D. MILLER 2 in 2018? I'm just trying to get a timeline. 3 A. That was -- that was finalized in 4 March of '19 formally. 5 Q. Okay. So at the time in 2018 that 6 BH Equities laid out the \$21 million, there not 7 only had not been a written agreement, but 8 there had not yet been an agreement as to the 9 nature and extent of BH Equities' interest in 10 SE Multifamily. Is that fair? 11 MR. DOHERTY: Objection, form. 12 You may answer, Mr. Thomas. 13 A. I don't think that it's fair. There 14 was multiple discussions and things like that. 15 No written agreement is fair. But there was 16 ongoing discussions trying to formalize things. 17 Q. Okay. Let's turn our attention to 18 HCRE. Do you know whether HCRE ever loaned any 19 money to SE Multifamily? 20 A. I don't believe they did. 21 Q. Do you know if HCMLP ever loaned any 22 money to SE Multifamily? 23 A. Could I ask for clarification around 24 the idea of "loan," just so we're on the same 25 page there? For both HCRE and HCM. I just
Page 40 1 BH EQUITIES, LLC - D. MILLER 2 want to make sure I'm answering the question 3 you're asking here. 4 Q. Sure. Like a loan like an IOU where 5 you give someone money with the expectation 6 that it would be returned with interest that's 7 not -- that's not dependent on the outcome of 8 the enterprise. 9 A. No, I don't believe there were any 10 loans provided by either party. 11 Q. All right. Let's get to the LLC 12 agreement itself. 13 MR. MORRIS: If we can put that on 14 the screen. We'll mark it as BH 15 Exhibit 2. 16 (Exhibit 2 marked.) 17 BY MR. MORRIS: 18 Q. And you've seen this document before, 19 right, sir? 20 A. Yes, sir. 21 Q. And you've reviewed it in preparation 22 for today's deposition, correct? 23 A. I have. 24 Q. All right. 25 MR. MORRIS: If we could go to the	Page 41 1 BH EQUITIES, LLC - D. MILLER 2 signature page. 3 BY MR. MORRIS: 4 Q. Do you see that the document was 5 signed on behalf of HCMLP and HCRE by James 6 Dondero? 7 A. I do. 8 Q. Do you know who Mr. Dondero is? 9 A. Yes. 10 Q. And who do you understand Mr. Dondero 11 to be? 12 A. My understanding is he was a primary 13 owner of both parties and a manager or 14 executive in that capacity as well, you know, 15 CEO type. 16 Q. And what's the basis for that 17 understanding? 18 A. Just understanding of the parties', 19 you know, business as -- you know, and our 20 perspective as a partner. 21 Q. Did anybody from Highland ever 22 explain to you or anybody at BH Equities who 23 Mr. Dondero was? 24 A. Not specifically, no. But -- at 25 least not to my understanding.

1 BH EQUITIES, LLC - D. MILLER
2 MR. MORRIS: Can we scroll down to --
3 BY MR. MORRIS:
4 Q. Do you see that right there is the
5 signature of Grant Scott, the director of
6 Liberty CLO Holdco, Ltd.?
7 A. I do.
8 Q. Do you know who Mr. Scott is?
9 A. I do not.
10 Q. Did you ever speak with Mr. Scott?
11 A. I don't believe so.
12 Q. Do you know if anybody on behalf of
13 BH Equities ever communicated with Mr. Scott in
14 any way about this amended agreement?
15 A. Not to my knowledge.
16 Q. Did you ever see any comments that
17 were made on behalf of Liberty concerning this
18 agreement?
19 A. No.
20 Q. Is it fair to say that there were
21 various drafts of this agreement prepared
22 before it was signed?
23 A. Yes.
24 Q. Do you recall when the first draft
25 was prepared?

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1 BH EQUITIES, LLC - D. MILLER
2 A. I believe it was on March 14th.
3 Q. Who was the scribner, if you will?
4 Who was in charge of drafting this amended
5 agreement?
6 MR. DOHERTY: Objection, form.
7 MR. MORRIS: Withdrawn.
8 BY MR. MORRIS:
9 Q. Do you know who drafted this amended
10 agreement?
11 A. I do not specifically, no.
12 Q. Was it Highland or was it
13 BH Equities?
14 A. It was not BH --
15 MR. DOHERTY: Objection -- hold on.
16 THE WITNESS: I'm sorry.
17 MR. DOHERTY: It's hard virtually,
18 Mr. Thomas.
19 Objection. Objection, form. I'm
20 sorry. You can answer the question.
21 A. BH Equities was not the drafter.
22 BY MR. MORRIS:
23 Q. And so is it fair to say from
24 BH Equities' perspective that BH Equities
25 provided comments to drafts that were created

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1 BH EQUITIES, LLC - D. MILLER
2 by Highland?
3 A. Yes.
4 Q. Do you recall how many drafts of the
5 agreement the parties went through?
6 A. A specific number, no. A handful, to
7 give it, you know, an order of magnitude, I
8 guess.
9 MR. MORRIS: Can we scroll to the
10 next one, please?
11 BY MR. MORRIS:
12 Q. There's the signature of Ben Roby.
13 Do you see that?
14 A. Yes, sir.
15 Q. That's the person that I think you
16 identified earlier today as someone who was
17 involved in Project Unicorn on behalf of
18 BH Equities. Do I have that right?
19 A. Correct.
20 Q. And I apologize if you testified to
21 this earlier, but can you remind me, then, of
22 what role Mr. Roby played within BH Equities?
23 A. At the time he was an acquisition
24 manager focused on acquiring properties in
25 which we made investments.

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1 BH EQUITIES, LLC - D. MILLER
2 Q. Was there an internal process for
3 reviewing documents like this before execution?
4 MR. DOHERTY: Objection. I want to
5 say, too -- I think this question is fair,
6 but if it goes into what attorneys said or
7 did, Mr. Thomas, you're not to go into
8 details of it.
9 But I just wanted to qualify that,
10 Mr. Morris, for the question. It's a fair
11 question, but I just wanted to make that
12 statement.
13 Go ahead, Mr. Thomas.
14 A. Yeah, this agreement was somewhat
15 fast moving. So I would say it didn't go
16 through the typical process. But Ben, Joanna,
17 and myself were communicating frequently over
18 the couple of days as it was going back and
19 forth.
20 Q. Does BH Equities believe today that
21 it had sufficient time to review the document
22 before signing?
23 A. I believe we knew -- I believe we
24 understood the economics portion of the
25 document as it affected us at the time we

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1 BH EQUITIES, LLC - D. MILLER

2 signed it.

3 Q. Okay. Before signing -- before
4 BH Equities signed the amended agreement, did
5 BH Equities take steps to make sure that the
6 document reflected BH Equities' intent?

7 A. Yes.

8 Q. At the time BH Equities signed the
9 amended agreement, did BH Equities believe that
10 the amended agreement was consistent with BH
11 Equities' intent?

12 A. We were prepared to abide by the
13 agreement as written. There were certain
14 pieces we hoped to maybe further negotiate, but
15 we understood the agreement and the economic
16 relationship at the time.

17 Q. Is there anything about the amended
18 agreement that BH Equities believed was
19 inconsistent with its intent at the time it
20 signed the document?

21 MR. DOHERTY: Objection, form.

22 BY MR. MORRIS:

23 Q. You can answer.

24 A. Yeah. I struggle with the word
25 "intent." There were certain parts we didn't

1 BH EQUITIES, LLC - D. MILLER

2 like or hoped to further discuss, negotiate,
3 but we understood the relationship and -- of
4 capital and return of capital and further
5 economics at that time, and signed
6 understanding those.

7 Q. Can you identify for me the parts
8 that BH Equities didn't like but it hoped that
9 it would be able to renegotiate?

10 MR. DOHERTY: Objection, form.

11 And, Mr. Thomas, if this goes into,
12 you know, legal analysis from attorneys,
13 then just be careful.

14 A. From a business standpoint, we had
15 hoped to increase the 6 percent residual
16 interest after capital was returned.

17 BY MR. MORRIS:

18 Q. And did you have any discussions
19 with -- withdrawn. I don't mean to personalize
20 this.

21 Did BH Equities have any
22 communications with Highland prior to the
23 execution of this agreement about BH Equities'
24 desire to increase the 6 percent residual
25 interest?

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1 BH EQUITIES, LLC - D. MILLER

2 A. Can you clarify if we're talking
3 about HCMLP, as we talked about the -- as the
4 bilateral, yes, there would have been e-mail
5 communication that we had hoped to have a
6 larger residual interest than 6 percent.

7 Q. Okay. And notwithstanding that hope,
8 BH Equities nevertheless entered into this
9 agreement with their eyes open, right? They
10 understood that they were getting a 6 percent
11 residual interest that could only be changed if
12 the parties agreed in the future to amend the
13 agreement, right?

14 A. Yes.

15 Q. Okay. Is there any other piece of
16 amended agreement that BH Equities hoped to
17 change in the future?

18 MR. DOHERTY: Objection, form.

19 And I want to, again, Mr. Thomas, if
20 it involves legal analysis --

21 MR. MORRIS: Withdrawn. That's fair.

22 I'll rephrase the question, Casey.

23 BY MR. MORRIS:

24 Q. Is there any other issue that
25 BH Equities told Highland that it wasn't happy

1 BH EQUITIES, LLC - D. MILLER

2 with at the time it signed the agreement and
3 that it hoped to negotiate an amendment for?

4 A. Not to my knowledge.

5 Q. At the time BH Equities signed the
6 amended agreement, did BH Equities have any
7 reason to believe that the agreement did not
8 reflect the intent of all of the members of
9 SEM?

10 MR. DOHERTY: Objection, form.

11 BY MR. MORRIS:

12 Q. You can answer.

13 A. As far as I know, or as far as we
14 knew, no, we did not have any direct knowledge.

15 Q. So kind of the flip side to that, is
16 it fair to say that at the time BH Equities
17 signed this agreement on March 15th,
18 BH Equities believed that the agreement
19 reflected the intent of the parties?

20 MR. DOHERTY: Objection, form.

21 MR. MORRIS: What's the objection?

22 MR. DOHERTY: This intent about him
23 knowing what the other side thinks. But I
24 understand your question, but just
25 maybe --

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1 BH EQUITIES, LLC - D. MILLER

2 MR. MORRIS: I'll rephrase the
3 question.

4 MR. DOHERTY: Okay.

5 BY MR. MORRIS:

6 Q. At any time prior to the -- to March
7 15th, did anybody acting on behalf of Highland
8 inform BH Equities that it believed any aspect
9 of the amended agreement was inconsistent with
10 Highland's intent?

11 A. Not that I'm aware.

12 MR. MORRIS: Hey, Casey, you were
13 spot on. Thank you. That was a better
14 question.

15 BY MR. MORRIS:

16 Q. At the time BH Equities signed the
17 amended agreement, did BH Equities have any
18 reason to believe that the amended agreement
19 contained any errors or mistakes?

20 A. No, I don't believe so.

21 Q. Was BH Equities aware of any error or
22 mistake in the amended agreement at the time it
23 signed it?

24 A. No. Not related to anything that we
25 were focused on.

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1 BH EQUITIES, LLC - D. MILLER
2 complete or accurate, just let me know, okay?

3 A. Okay.

4 Q. All right. So this is Schedule A to
5 the amended agreement. Do you see that?

6 A. Yes.

7 Q. And you've seen this page before,
8 correct?

9 A. Correct.

10 Q. And this page shows that Highland
11 Capital Management, L.P. made a capital
12 contribution of \$49,000. Do I have that right?

13 A. Yes.

14 Q. And it also shows that Highland
15 Capital Management, L.P. had a 46.06 percentage
16 interest in SE Multifamily, correct?

17 A. Yes, that's what it says.

18 Q. Okay. And those facts were known to
19 BH Equities at or before the time it signed
20 this amended agreement, correct?

21 A. Correct.

22 Q. In fact, BH Equities agreed that
23 HCMLP would hold a 46.06 percentage interest in
24 SE Multifamily while making a capital
25 contribution of \$49,000, correct?

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1 BH EQUITIES, LLC - D. MILLER

2 Q. Did anybody acting on behalf of
3 Highland ever inform BH Equities prior to the
4 execution of the agreement that Highland
5 believed there was an error or mistake in that
6 document?

7 A. No, not to my knowledge.

8 Q. All right.

9 MR. MORRIS: Let's go to Schedule A,
10 please.

11 MR. DOHERTY: And, Mr. Morris, is
12 this -- Mr. Thomas, this has been sent to
13 you in the chat, right, the entire
14 document, so he could pull it open if he
15 wanted to, or he could print it out if he
16 wanted to? I just wanted to let you know.
17 Virtual depositions are hard.

18 THE WITNESS: I was not aware. Thank
19 you, Casey.

20 BY MR. MORRIS:

21 Q. And again, Mr. Thomas, this is not a
22 memory test. I am not trying to trick you. I
23 really appreciate your counsel's suggestion and
24 observation. If there's anything you need to
25 see to make your answers, you know, more

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1 BH EQUITIES, LLC - D. MILLER

2 A. Again, clarifying a little bit on
3 the -- when the percentages came into play
4 being subject to capital being returned, yes.

5 Q. And by that, just to clarify, you
6 mean that the percentage interests only kicks
7 in after the capital contributions are returned
8 in full, correct?

9 A. Yes, that's what I mean.

10 Q. So for purposes of the waterfall, do
11 I have this right -- and there may be some
12 exceptions to this -- but the money had to get
13 paid back to KeyBank first, right?

14 A. Yes.

15 Q. And then any money that was original
16 capital above and beyond the KeyBank loan would
17 then have to be paid back, right?

18 A. Yes.

19 MR. DOHERTY: Object -- sorry.

20 BY MR. MORRIS

21 Q. And it was only after at least those
22 two events occurred that the remaining value
23 would be distributed in accordance with the
24 percentages under the percentage interest
25 column. Is that fair?

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1 BH EQUITIES, LLC - D. MILLER
2 A. Yes, that was the deal as we
3 understood it.
4 Q. Okay. And is it fair to say that at
5 the time the amended agreement was executed,
6 that BH Equities believed Schedule A accurately
7 reflected the intent of the parties?

8 A. Yes.

9 Q. Again, flip side, before signing the
10 agreement, did BH Equities have any reason to
11 believe that Schedule A did not accurately
12 reflect the intent of the parties?

13 A. No.

14 Q. Prior to signing this agreement, did
15 BH Equities ever hear from anybody acting on
16 behalf of Highland that Highland believed
17 Schedule A was inaccurate in any way?

18 A. Using Highland as the counterparty
19 that we were working with, no, we did not.

20 Q. I'm going to -- I'm going to now ask
21 about each of the component members, because I
22 want to make sure that we're clear here.

23 Prior to the time that BH Equities
24 signed the amended agreement, did anybody
25 acting on behalf of HCRE tell BH Equities that

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1 BH EQUITIES, LLC - D. MILLER
2 A. I'd have to look through the document
3 or search it.
4 BY MR. MORRIS:

5 Q. Okay. So let's go to Section 1.7.
6 Do you see 1.7 is entitled "Company Ownership"?
7 A. Yes, I see that.
8 Q. And am I reading it correctly that
9 the percentages set forth in Section 1.7 match
10 exactly with the percentage interest set forth
11 on Schedule A?

12 A. Yes.

13 Q. And was it, from BH Equities'
14 perspective, the parties' intent that the
15 company ownership percentages set forth in 1.7
16 would match the percentage interests set forth
17 in Schedule A?

18 MR. DOHERTY: Objection. Form.

19 Objection, form. I need to say objection,
20 form. Sorry.

21 BY MR. MORRIS:

22 Q. You can answer.

23 A. It -- I believe it makes sense,
24 without further -- again, I've read the
25 document. I don't recall specifically what 1.7

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1 BH EQUITIES, LLC - D. MILLER
2 they believed Schedule A was wrong in any way?
3 A. I don't know that I can say that
4 affirmatively, as it wasn't -- again, with us
5 it was very much a bilateral. We knew there
6 were two counterparties outside of BH,
7 excluding Liberty, from that discussion. We
8 didn't exactly know the roles clearly as to who
9 was responsible for what parties' interests
10 other than BH's was very clear and there was a
11 related party of Highland, HCRE, as well.

12 Q. All right. Let me ask a different
13 question, then. Prior to the time that
14 BH Equities signed the amended agreement, did
15 anybody acting on behalf of any of the other
16 members of SE Multifamily inform BH Equities
17 that they believed there was an error in
18 Schedule A?

19 A. Not to my knowledge.

20 Q. Thank you. The percentage interests
21 that are reflected in Schedule A were used
22 elsewhere in the amended agreement; is that
23 correct?

24 MR. DOHERTY: Objection. If
25 there's -- objection, form.

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1 BH EQUITIES, LLC - D. MILLER
2 governs, if it governs anything in particular.
3 But as written, the numbers match up, and we
4 didn't have an issue with this specific clause
5 at the time of signing.

6 Q. And this is the clause that
7 specifically identifies what ownership interest
8 each member shall have in SE Multifamily. Am I
9 reading that fairly?

10 A. Yes, with respect -- and I think it
11 has to give deference to the waterfall
12 provisions and distribution provisions later in
13 the agreement.

14 Q. Okay. So subject to the waterfall
15 and distribution provisions, would you agree
16 that Section 1.7 was intended to identify the
17 ownership interest of each of the members of SE
18 Multifamily?

19 A. I believe so, yes.

20 Q. Okay. Can we go to Section 6.1,
21 please? Do you see there's --

22 MR. DOHERTY: John, I could use a
23 break in a few minutes, but I can wait. I
24 just didn't know for a break point if you
25 could take it. But if you want to keep on

	Page 58		Page 59
1	BH EQUITIES, LLC - D. MILLER	1	BH EQUITIES, LLC - D. MILLER
2	going, that's fine.	2	Section 9.3, please? All right. So if we
3	MR. MORRIS: Casey, if you could just	3	could just go to the top of it.
4	hold on, I've just got two more provisions	4	BY MR. MORRIS:
5	and then we'll take a break.	5	Q. All right. So this Section 9.3 deals
6	MR. DOHERTY: Sure. No problem. I	6	with liquidation. Do you see that?
7	just wanted to flag it.	7	A. Yes.
8	BY MR. MORRIS:	8	Q. And it -- is it fair to say that
9	Q. Section 6.1(a), do you see that, sir?	9	Section 9.3, if we can scroll down just a
10	A. Yes, sir.	10	little bit, is intended to provide for the
11	Q. Okay. And that provision deals with	11	waterfall in a liquidation scenario?
12	the distribution of distributable cash as	12	A. Yes.
13	defined, correct?	13	Q. And is it fair to say that after the
14	A. Yes.	14	expenses and payments are made in Sections
15	Q. And subject to Article VI and	15	9.3(a) through (d), that any remaining cash or
16	Article IX, distributable cash is going to be	16	assets would be distributed to the members of
17	distributable in the same percentages as the	17	SE Multifamily in the same percentage as the
18	percentage interests set forth in Schedule A,	18	percentage interests set forth on Schedule A?
19	correct?	19	A. Yes.
20	A. Correct.	20	Q. And that's what the parties intended
21	Q. And that's -- that's what the parties	21	when they signed this agreement, to the best of
22	intended when they wrote this provision and	22	BH Equities' understanding, correct?
23	agreed to it, correct?	23	A. Correct.
24	A. That's what we agreed to, yes.	24	MR. MORRIS: Okay. We can take that
25	MR. MORRIS: Okay. Can we go to	25	break now. It's 12:03. Can we just come
	Page 60		Page 61
1	BH EQUITIES, LLC - D. MILLER	1	BH EQUITIES, LLC - D. MILLER
2	back at 12:10?	2	BH Equities that Highland Capital Management,
3	MR. DOHERTY: We can go off of the	3	3 L.P. receive a 46.06 percentage interest in SE
4	record, too. I'm fine with that. I know	4	Multifamily in exchange -- withdrawn.
5	it's getting around -- I'm good on	5	It was acceptable to BH Equities that
6	lunchtime. I don't know how much time, if	6	Highland Capital Management, L.P. make a
7	you want to talk, John, me and you after,	7	capital contribution of \$49,000 to SE
8	but I'm fine to come back in five minutes	8	Multifamily while receiving a 46.06 percentage
9	from break.	9	interest, correct?
10	MR. MORRIS: Okay. 12:10. Seven	10	A. I would say we were somewhat
11	minutes. Thank you.	11	indifferent, as it didn't affect our economics
12	MR. DOHERTY: Okay.	12	in -- you know, beyond the 6 percent that we
13	(Recess taken 11:03 a.m. Central Time	13	understood we were getting into.
14	- 11:12 Central Time.)	14	Q. You agreed to it, correct?
15	BY MR. MORRIS:	15	A. Yes.
16	Q. Let's go back to Schedule A, please.	16	Q. And you didn't voice any objections
17	Mr. Thomas, can you hear me okay?	17	about that, correct?
18	A. Yes.	18	A. Not to my knowledge.
19	Q. Okay. Before signing this amended	19	Q. And you knew that that was part of
20	agreement, did BH Equities ever raise any	20	the overall deal, correct?
21	concerns with Highland about HCMLP receiving a	21	A. Yes.
22	46.06 percentage interest while putting in	22	Q. Before signing this agreement, did
23	capital of \$49,000?	23	BH Equities have any understanding as to why
24	A. I don't recall any specific concerns.	24	Highland Capital Management, L.P. was going to
25	Q. In fact, it was acceptable to	25	be a member of SE Multifamily?

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1 BH EQUITIES, LLC - D. MILLER	1 BH EQUITIES, LLC - D. MILLER
2 A. I don't believe we did.	2 Q. Was this allocation the subject of
3 Q. Did BH Equities ever speak with	3 any negotiation?
4 Highland about why HCMLP was participating in	4 MR. DOHERTY: Objection, form.
5 this transaction?	5 MR. MORRIS: Withdrawn.
6 A. Not to my knowledge.	6 BY MR. MORRIS:
7 Q. Did BH Equities ever ask Highland why	7 Q. Was the allocation of 94 percent to
8 HCMLP was obtaining a 46.06 percent interest?	8 6 percent for BH Equities on profits and losses
9 A. I don't recall that we did.	9 the subject of any negotiation?
10 Q. So this was -- Schedule A was	10 A. It was on a phone call between myself
11 something that BH Equities knew about and	11 and Mr. Broaddus, it came up as it, you know,
12 agreed to at the time it signed this agreement.	12 wasn't exactly normal. But it was an issue
13 Fair?	13 that, you know, was kind of internal, so it
14 A. Yes.	14 wasn't broadly negotiated past or those things,
15 Q. Okay. Let's go to Section 6.4(a) on	15 as we were, again, somewhat indifferent.
16 page 12, please. Okay. Do you see in Section	16 Q. And what does it mean that it was not
17 6.4(a), there's a -- well, 6.4 deals with	17 exactly normal?
18 allocations of profits and losses.	18 A. Normally the allocation of profit and
19 Do you see that?	19 losses would also follow an allocation -- the
20 A. Yes.	20 waterfall allocation or those things more
21 Q. In Section 6.4(a), the parties agreed	21 closely.
22 that except as provided in that section, 94	22 Q. And did Mr. Broaddus provide any
23 percent of SE Multifamily's profits and losses	23 explanation as to why Highland wasn't following
24 would be allocated to HCMLP; is that fair?	24 that course that you just described?
25 A. Yes.	25 A. Not in any -- not in detail.
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1 BH EQUITIES, LLC - D. MILLER	1 BH EQUITIES, LLC - D. MILLER
2 Q. Did he describe any reason for	2 member to the SEM amended agreement ever inform
3 allocating 94 percent of SE Multifamily's	3 BH Equities that Section 6.4(a) was incorrect
4 profits and losses to HCMLP?	4 in any way?
5 A. No.	5 A. I don't believe so.
6 Q. Am I correct that under the terms of	6 Q. Do you know if the amended agreement
7 the amended agreement, none of SE Multifamily's	7 that we're looking at was ever amended for any
8 profits and losses would be allocated to HCRE,	8 reason at any time?
9 correct?	9 A. There was a slip page at some
10 A. That's correct.	10 point -- and I believe it was after this --
11 Q. Did BH Equities ask Highland why none	11 just to update capital. But it was a
12 of the profits and losses were being allocated	12 nonsubstantial update.
13 to HCRE?	13 Q. I think we'll get to that in a few
14 A. I don't believe so.	14 minutes.
15 Q. Did anybody acting on behalf of any	15 Other than the slip page that you
16 of the other members ever discuss with	16 just described, is BH Equities aware of any
17 BH Equities why HCRE was not being allocated	17 amendment to the amended agreement as we've
18 any of SE Multifamily's profits or losses?	18 defined it here today?
19 A. I don't believe so.	19 A. No.
20 Q. To the best of -- withdrawn.	20 Q. BH Equities never signed an amendment
21 To the best of BH Equities'	21 to the amended agreement, correct?
22 knowledge, does paragraph 6.4(a) accurately	22 A. Correct.
23 reflect the parties' intent?	23 Q. And BH Equities was never informed by
24 A. To the best of our knowledge, yes.	24 anybody acting on behalf of HCRE or any of the
25 Q. Did anybody acting on behalf of any	25 other members to the agreement that the amended

1 BH EQUITIES, LLC - D. MILLER 2 agreement had been amended, correct? 3 A. Correct. 4 Q. Did BH Equities ever receive in 5 writing any draft agreement to the amended 6 agreement? 7 A. I don't believe so. 8 Q. Did -- after the time that this 9 agreement was executed, did BH Equities ever 10 discuss with any member whether this amended 11 agreement would be further amended? 12 A. Yes. 13 Q. Can you describe for me when those 14 conversations take place or communications took 15 place? 16 A. Sure. There was e-mails expressing 17 our desire to amend our 6 percent amount, right 18 around the time of signing and a couple of 19 times thereafter. I don't remember specific 20 dates. 21 So, you know, starting in March of -- 22 of '19 and then occasionally thereafter, we 23 expressed a desire to expand our 6 percent 24 number. 25 Q. And what was BH -- what did Highland	Page 66 1 BH EQUITIES, LLC - D. MILLER 2 say in response? 3 A. I believe in the e-mail 4 correspondence it said something along the 5 lines of there may be future amendments needed 6 or something along that line. 7 Q. But it never happened; is that fair? 8 A. That is fair. 9 Q. And is it also fair that any 10 discussion of any amendment that BH Equities is 11 aware of would be reflected in the e-mails that 12 BH Equities produced in response to the 13 subpoena? 14 A. Could you reask the question? I just 15 want to make sure I answer it correctly. 16 Q. Sure. Are the communications 17 concerning a possible amendment to the amended 18 agreement reflected in the e-mails that 19 BH Equities produced in response to the 20 subpoena? 21 A. Yes. 22 Q. Are you aware of any communications 23 concerning a possible amendment that are not 24 reflected in the e-mails that BH Equities 25 produced in response to the subpoena?
Page 68 1 BH EQUITIES, LLC - D. MILLER 2 A. I am not. 3 Q. Let's -- let's start to look at some 4 other documents. 5 (Exhibit 3 marked.) 6 MR. MORRIS: Let's put up on the 7 screen what we've marked as Exhibit 3. 8 And so we're going to go back in time a 9 little bit to prior to the execution of 10 the agreement. 11 BY MR. MORRIS: 12 Q. And I'm directing your attention to a 13 document that's been marked, if we could look 14 at the bottom, Bates stamp BH 92. I'm going to 15 skip the zeros. 16 MR. DOHERTY: Mr. Morris, with 17 e-mails, I always like to, you know, if 18 possible, have it so I can start reading 19 from the bottom of the conversation. Will 20 these be put in the chat as where we're 21 going? 22 MR. MORRIS: Oh, yeah, we'll put it 23 in the chat. 24 MR. DOHERTY: Okay. 25 MR. MORRIS: I don't think there's	Page 69 1 BH EQUITIES, LLC - D. MILLER 2 anything below what I'm asking about, but 3 can you scroll -- 4 MS. CANTY: It's in there now. 5 MR. DOHERTY: These virtual 6 depositions, I know it's -- you go to the 7 top, you don't have context. So I just 8 wanted to -- I'll let you go. Thank you. 9 BY MR. MORRIS: 10 Q. So do you see -- if we could just put 11 this whole e-mail up on the screen right there. 12 Okay. It's an e-mail from Mr. Roby to Matt 13 McGraner, do you see that, from October 7, 14 2018? 15 A. Yes. 16 Q. Okay. We talked -- I think you 17 mentioned or maybe I mentioned Mr. McGraner 18 earlier. Do you have an understanding as to 19 whose interest Mr. McGraner was representing in 20 these communications? 21 A. We would have viewed them as -- or 22 Matt as representing kind of the broader -- you 23 know, again, we viewed it as a bilateral 24 negotiation, so BH -- and then I'm going to use 25 air quotes again -- Highland broadly, the other

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1 BH EQUITIES, LLC - D. MILLER
2 two parties. You know, I don't specifically
3 know which of those two parties, but -- that he
4 was representing, the other party to the
5 agreement.

6 Q. Okay. I'm focused on the chart with
7 the sentence above it, but, again, you should
8 read whatever you want of the e-mail for
9 context. My question for you, the first
10 question is, do you know what that chart is in
11 the middle of the page under the word "Cash"?

12 A. Yes.

13 Q. And what's your understanding of what
14 this chart depicts?

15 A. It is depicting the sources of the
16 capitalization for SE Multifamily Holdings.

17 Q. And so is this a proposal that's
18 being made by BH Equities, or is this a summary
19 of discussions that have been taking place, if
20 you know?

21 A. A little of both.

22 Q. Okay. And I see that there's a
23 reference to Highland there on the left. Do
24 you see that? Is that -- do you know what that
25 refers to?

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1 BH EQUITIES, LLC - D. MILLER
2 MR. MORRIS: And if we could scroll
3 up just to see Mr. Broaddus's response.

4 BY MR. MORRIS

5 Q. Mr. Broaddus again was acting on
6 behalf of Highland. Do I have that right?

7 MR. DOHERTY: Objection. I know we
8 have some kind of defined terms for the
9 deposition, but I just want to --
10 objection, form.

11 BY MR. MORRIS:

12 Q. Based on the prior testimony, you can
13 answer, sir.

14 A. He was acting on behalf of what we
15 viewed as the Highland, you know, broad entity.
16 So we didn't know specifically HCMLP or HCRE in
17 particular. But as a counterparty to the
18 broader Highland, you know, ecosystem, yes.

19 Q. Okay. Can you just -- can you just
20 read Mr. Broaddus's e-mail to yourself and tell
21 me when you're finished?

22 A. I've finished.

23 Q. Okay. Do you know if anybody ever
24 told KeyBank that the SE Multifamily, LLC
25 agreement that was in existence at that time

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1 BH EQUITIES, LLC - D. MILLER
2 A. We were kind of lumping -- in this
3 correspondence, we were lumping Highland
4 together as the counterparty to BH in the -- in
5 the agreement and in the transaction.

6 Q. Okay. So this is October 7, 2018,
7 and it's after the closing of the acquisition
8 of the real property by SE Multifamily,
9 correct?

10 A. Correct.

11 Q. Do you know if the numbers reflected
12 on this chart changed between October and the
13 time the deal was consummated in March?

14 A. I believe they were modestly updated,
15 but not in any order of magnitude.

16 MR. MORRIS: Let's go to the next
17 document, we'll mark as Exhibit 4. It has
18 Bates number BH 133 to 44.

19 (Exhibit 4 marked.)

20 BY MR. MORRIS:

21 Q. And if you go to the bottom of the
22 first page, you'll see that Mr. Roby asks
23 Mr. Broaddus for a copy of the SE Multifamily
24 LLC agreement. Do you see that?

25 A. Yes.

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1 BH EQUITIES, LLC - D. MILLER
2 was just a placeholder?
3 A. I don't have knowledge one way or the
4 other.

5 Q. Do you know if anybody told KeyBank
6 that the original LLC agreement was
7 meaningless?

8 A. The same answer. I don't have
9 knowledge one way or the other.

10 Q. Okay. But as of this time,
11 obviously, BH Equities did know that an
12 original LLC agreement existed, right?

13 A. Yes.

14 Q. And that the original agreement was
15 going to be amended to reflect, quote, whatever
16 the deal terms are, closed quote, correct?

17 A. Correct.

18 Q. And, in fact, the original LLC
19 agreement was amended, correct?

20 A. Yes.

21 Q. And that's the agreement we just
22 looked at; is that fair?

23 A. Yes.

24 Q. So is it fair to say that consistent
25 with Mr. Broaddus's November 7th e-mail, the

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1 BH EQUITIES, LLC - D. MILLER
2 original LLC agreement was amended to, quote,
3 reflect whatever the deal terms were?
4 A. I think that's fair.
5 MR. MORRIS: Let's go to the next
6 document, Exhibit 5, which has Bates
7 number BH 1271 to -73.
8 (Exhibit 5 marked.)

9 BY MR. MORRIS:

10 Q. Before I ask you any questions about
11 this document, the agreement was dated
12 March 15th, 2019. Do you remember that?
13 A. Yes.
14 Q. And was there a sense of urgency to
15 get the agreement signed by the end of that
16 particular day?
17 A. Yes.
18 Q. Do you have an understanding as to
19 what the cause of that urgency was?
20 A. My understanding from the
21 correspondence of March 15th is the deadline to
22 either file or extend taxes for pass-through
23 entities, and that was driving the urgency.
24 Q. And was the goal to make the
25 agreement effective as of August 23rd, 2018,

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1 BH EQUITIES, LLC - D. MILLER
2 bottom is from Mr. Broaddus to you and to
3 Mr. Roby with a copy to Mr. McGraner, and it's
4 sent on March 14th. Do you see that?
5 A. Yes, sir.
6 Q. And do you recall -- I think you may
7 have testified to this earlier, but does this
8 refresh your recollection that BH Equities was
9 presented with a draft amended LLC agreement
10 for SE Multifamily on March 14th?
11 A. Yes.
12 Q. And do you see in the
13 next-to-the-last paragraph in Mr. Broaddus'
14 first e-mail there, he says, quote, the
15 contribution schedule in the attached needs to
16 be updated with the actual contribution
17 numbers. I have an updated version I can send
18 in a separate e-mail.
19 Do you see that?
20 A. Yes.
21 Q. So were the actual contribution
22 numbers and the contribution schedule a subject
23 of discussion between BH Equities and Highland
24 prior to the execution of the amended
25 agreement?

1 BH EQUITIES, LLC - D. MILLER
2 the date on which the original LLC agreement
3 was entered into?
4 A. Yes.
5 Q. And is it BH Equities' understanding
6 that in order to make the amended and restated
7 agreement retroactive to August 23rd, 2018, it
8 had to be signed by the end of the day on March
9 15, 2019?
10 MR. DOHERTY: Objection -- withdraw
11 my statement.
12 A. I'm not an expert in that matter, but
13 that would certainly be the understanding we
14 were given.
15 BY MR. MORRIS:
16 Q. Okay. I appreciate the distinction.
17 Was BH Equities told by Highland that the
18 agreement had to be executed on or before March
19 15th in order for it to be retroactive to
20 August 2018?
21 A. Yes. That was the -- what we were
22 told.
23 Q. Okay. So let's take a look at the
24 e-mail that's up on the screen. You'll see
25 there's actually two e-mails. The one on the

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1 BH EQUITIES, LLC - D. MILLER
2 A. Yes.
3 Q. And then you can see the e-mail
4 above, and Mr. Broaddus follows up and he says,
5 among other things, quote, "Contribution
6 schedule attached." Do you see that?
7 A. Yes.
8 Q. And if we can scroll to the next
9 page, the next page actually has Schedule A
10 attached. If we could scroll down. I don't
11 know if you can see it in the chat room because
12 I don't want you to just take my word for it.
13 But do you recall receiving a Schedule A from
14 Mr. Broaddus prior to the execution of the
15 agreement?
16 A. Yes.
17 Q. Okay. And is this the schedule that
18 Highland prepared and delivered to BH Equities
19 prior to the execution of the amended
20 agreement?
21 A. I believe so.
22 Q. And is it BH Equities' understanding
23 that somebody acting on behalf of Highland
24 completed Schedule A before delivering it to
25 BH Equities?

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1 BH EQUITIES, LLC - D. MILLER
2 A. Yes, that was our understanding.
3 Q. Okay. BH Equities didn't prepare the
4 numbers that are set forth on Schedule A, did
5 it?
6 A. No.
7 Q. That was Highland, correct?
8 A. Correct.
9 Q. And Highland delivered this document
10 to BH Equities the day before the agreement
11 was -- withdrawn. Actually, delivered it to BH
12 Equities on March 15, 2019, correct?
13 A. This particular Schedule A, yes, was
14 delivered on March 15th.
15 Q. And it was delivered as a stand-alone
16 document by itself with nothing else; is that
17 right?
18 A. That's my recollection, based on -- I
19 believe so without, you know, seeing some other
20 sourcing.
21 THE REPORTER: I'm sorry,
22 Mr. Doherty, did you say something?
23 MR. DOHERTY: Objection. Well,
24 objection that -- John, may I make a
25 comment?

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1 BH EQUITIES, LLC - D. MILLER
2 BH Equities has Bates stamped these documents
3 consecutively 1271, 1272, and 1273?
4 A. Yes.
5 Q. And do you see that Mr. Broaddus's
6 e-mail at the very first page shows that
7 there's an attachment?
8 A. Yes.
9 MR. MORRIS: Can we go up to the
10 first page, please?
11 BY MR. MORRIS:
12 Q. And do you see that Mr. Broaddus's
13 first sentence says attached is the
14 contribution schedule, at least in substance?
15 A. Yes.
16 Q. And do you have any reason to believe
17 that the Schedule A that we just looked at is
18 not the contribution schedule that Mr. Broaddus
19 attached to his e-mail on March 15, 2019, at
20 2:02 p.m.?
21 A. No, I do not. I believe that is the
22 schedule.
23 (Exhibit 6 marked.)
24 Q. Okay. So let's go, then, to
25 Exhibit 6, which is a document Bates numbered

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1 BH EQUITIES, LLC - D. MILLER
2 If you need a document to refresh
3 yourself, Dusty, especially if it's on the
4 screen and -- you know, let Mr. Morris
5 know that you want to look at the prior
6 e-mail or, you know, if you're asking
7 to -- I hope that was okay, Mr. Morris.
8 Appreciate it.
9 MR. MORRIS: It's okay. I mean, I'm
10 happy to show him the third page of the
11 document. I just --
12 MR. DOHERTY: I just know Mr. Thomas
13 is a very detailed-oriented man, so I know
14 if he doesn't -- you know, if it's a
15 question like was this the one sent, in
16 case he wants to go back and see that it
17 was attached to the document or he can ask
18 Mr. Morris is this the attachment. But,
19 you know, I just wanted to make that --
20 make that point.
21 MR. MORRIS: All right. First of
22 all, La Asia, can you show Mr. Thomas the
23 third page of the exhibit? It's blank.
24 BY MR. MORRIS
25 Q. And do you see, Mr. Thomas, that

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1 BH EQUITIES, LLC - D. MILLER
2 1363 to -67. Now, this is an e-mail from you,
3 and attached here -- do you see that there is
4 an attachment that's mentioned in the header of
5 your e-mail?
6 A. Yes.
7 Q. And you refer to an attachment in the
8 first sentence of your e-mail. Do you see
9 that?
10 A. Yes.
11 MR. MORRIS: And if we can scroll
12 down.
13 BY MR. MORRIS:
14 Q. Again, you're free to look at
15 whatever you want. I'm looking for the
16 attachment.
17 MR. MORRIS: If we can keep going.
18 Right there.
19 BY MR. MORRIS:
20 Q. Please scroll down and confirm, if
21 you can, that the document that's set forth on
22 page 1366 and 1367 is the attachment to the
23 e-mail that we're looking at that you sent.
24 A. Yeah. And I'm looking to my left
25 because I pulled it up via the chat link. So

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1 BH EQUITIES, LLC - D. MILLER
2 I'm just -- it gives me a bigger screen to view
3 it.

4 Q. Okay. So that's the attachment that
5 you sent, right?

6 A. Yes.

7 Q. And your attachment deals with the
8 very issue that you identified earlier today
9 that you were focused on, and that was the
10 waterfall; is that right?

11 A. Correct.

12 Q. Okay. And in the first sentence when
13 you say that, "Attached is what we proposed in
14 October to try and handle this," this is
15 expressly referring to the waterfall provision,
16 correct?

17 A. Yes.

18 Q. Okay. And you go on to say, "This
19 covers the distribution language in a way that
20 we can get comfortable with, as we need to make
21 sure that if the capital that Highland put in
22 associated with debt is off, that it's not
23 dilutive."

24 Do you see that?

25 A. I do.

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1 BH EQUITIES, LLC - D. MILLER
2 Q. What capital that Highland put in
3 associated with debt, what does that refer to?

4 A. The KeyBank facility.

5 Q. And what specifically was your
6 concern about how that was treated?

7 A. Our understanding is it would be a
8 loan to HCRe or, you know, an entity affiliated
9 with, you know, kind of the broad Highland, and
10 would be put in as capital, and that obviously
11 it would have a preference to getting paid off,
12 but that it wouldn't then also keep us from
13 getting our capital back after the KeyBank
14 was -- KeyBank facility was paid off.

15 Q. Okay. And then you go on to say
16 later in the paragraph, "We think the
17 attachment does that while still allocating the
18 taxable income loss in a way that meets your
19 needs by percentage."

20 Do you see that?

21 A. Yes.

22 Q. What did you mean by that?

23 A. I had had a brief phone call with
24 Mr. Broaddus, and that was in that -- in
25 relation to the profit and loss allocation

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1 BH EQUITIES, LLC - D. MILLER
2 where we were kind of indifferent.
3 Q. And what needs did Mr. Broaddus
4 describe for you?

5 MR. DOHERTY: Objection.

6 MR. MORRIS: Withdrawn.

7 BY MR. MORRIS:

8 Q. Did Mr. Broaddus describe for you the
9 needs that Highland had with respect to the
10 allocation of taxable income and loss?

11 A. Not in any level of detail.

12 Q. So when you said that you believed
13 your provision would meet their needs, how did
14 you believe their provision would meet
15 Highland's needs?

16 A. The provision that we shared was
17 focused more on the distribution of cash and
18 not the allocation of profits and losses.

19 Q. And is that because Section 6.1 deals
20 with the allocation of cash and Section 6.4
21 deals with the allocation of profits and
22 losses?

23 A. Could you show me Section 6.4, just
24 to verify the numbers? But, yes, 6.1 was
25 focused exclusively on the allocation of cash

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1 BH EQUITIES, LLC - D. MILLER
2 or the distribution of cash and that a
3 different section, presumably 6.4, would focus
4 on the allocation of profits and losses,
5 separate and distinct from cash.

6 Q. Okay. And I apologize for asking it
7 again, but help me to understand how the
8 attached -- oh, is it because your attached
9 proposal doesn't impact the allocation of
10 taxable income and losses at all?

11 A. Correct.

12 Q. Ah, okay. So I understand. So -- so
13 you're trying to explain -- is it fair to say
14 that you're trying to explain to Mr. Broaddus
15 that your concern is the distribution waterfall
16 but that he can leave the tax allocation the
17 way they wanted it?

18 A. Yes, yes.

19 Q. Okay. Do you recall -- actually,
20 towards the end it says, "The capital in this
21 agreement would only be the capital that
22 Highland put in that is not also incorporated
23 in the bridge loan agreements. I think that is
24 plus or minus \$40 million based on my
25 understanding."

1 BH EQUITIES, LLC - D. MILLER 2 Is what you're saying there that 3 Highland was going to put in approximately -- 4 withdrawn. 5 Is what you're saying there that 6 Highland was going to get credit for having put 7 in \$290 million or thereabouts into SE 8 Multifamily, 250 million of which was coming 9 from the KeyBank loan and the other 40 million 10 of which was coming from Highland? 11 A. Yes, that's the distinction I was 12 trying to make. 13 Q. Okay. And under the waterfall is it 14 BH Equities' understanding that it agreed that 15 the \$250 million that had been borrowed from 16 KeyBank would be paid back first? 17 A. Yes. 18 Q. Before return of capital? 19 A. Yes. 20 Q. Does BH Equities know the source of 21 funding for the other \$40 million? 22 A. No, not at this time. 23 Q. Did BH Equities ever ask Highland 24 where the \$40 million was coming from? 25 A. No, not that I -- not that I'm aware.	Page 86 1 BH EQUITIES, LLC - D. MILLER 2 Q. Does BH Equities know when HCRE was 3 formed? 4 A. I don't believe so. We may have an 5 organizational doc or something that was 6 provided as part of a deal that was shared with 7 a lender, et cetera, but not in the ordinary 8 course would we know that. 9 Q. Had BH Equities done business with 10 HCRE prior to Project Unicorn? 11 A. I don't know for sure. In our 12 business generally there are a lot of 13 subsidiaries and things like that that are 14 formed for specific deals. So it's quite 15 possible that HCRE could have been an upper 16 entity that owned a subsidiary, et cetera. But 17 I just don't know the waterfalls cold -- or the 18 organizational charts cold to know if we did or 19 did not specifically with HCRE. 20 Q. Okay. That's fair. 21 Had BH Equities done business with 22 HCMLP or any entity that BH Equities believed 23 was related or affiliated with HCMLP prior to 24 Project Unicorn? 25 A. We had numerous projects and
Page 88 1 BH EQUITIES, LLC - D. MILLER 2 partnerships with Highland broadly, you know, 3 whether that be HCRE, HCMLP, the NexPoint RE, 4 et cetera, to the tune of 40-plus property 5 partnerships, et cetera. So we had significant 6 relations with them and still do on the 7 management company side. So I don't 8 specifically know what entities were owned or 9 related to what, but we had significant prior 10 experience with the parties involved. 11 Q. And were -- were Mr. McGraner or 12 Mr. Broaddus or Mr. Chang involved in any of 13 those other deals? 14 A. Yes. 15 Q. Were they the primary contacts that 16 BH Equities had for the transactions that 17 BH Equities did with Highland and its 18 affiliated and related entities? 19 A. I believe so, yes. 20 (Exhibit 7 marked.) 21 Q. Let's go to Exhibit 7, please, which 22 is a two-page e-mail with Bates number 1437 to 23 -38. And if we could start at the bottom, 24 you'll see -- this is the e-mail that we just 25 looked at from you, right?	Page 89 1 BH EQUITIES, LLC - D. MILLER 2 A. Yep. 3 Q. It's the exact same e-mail? 4 A. Yes. 5 Q. And then if we scroll a little higher 6 on the page, you'll see that it appears that 7 Mr. Broaddus, the person to whom you sent it, 8 forwarded it to Mr. Chang. Do you see that? 9 A. Yes. 10 Q. And then if we can keep scrolling up, 11 Mr. Chang sent an e-mail back to Mr. Broaddus. 12 Do you see that? 13 A. Yes. 14 Q. And then Mr. Broaddus forwarded 15 that -- Mr. Chang's e-mail to you. Is that 16 fair? 17 A. Yes. 18 Q. And Mr. Chang's e-mail was a direct 19 response to the proposal that was attached to 20 the e-mail that we just looked at that was 21 marked as Exhibit 6, right? 22 A. Yes. 23 Q. And what's in Mr. Chang's e-mail is a 24 different provision for the waterfall. Fair? 25 A. Yes.

1 BH EQUITIES, LLC - D. MILLER 2 MR. DOHERTY: Objection. Could I see 3 the -- could we zoom out so I can see that 4 whole e-mail? Do y'all mind? 5 MR. MORRIS: Sure. Yep. 6 MR. DOHERTY: Okay. Not really an 7 objection but a request. 8 I think There's an (e). And maybe 9 it's not. Could you scroll down just so I 10 can see the (e)? 11 MR. MORRIS: It's at the bottom of 12 the page there. 13 MR. DOHERTY: I'm sorry to be 14 annoying. I just wanted to see it. While 15 we were talking about it, I didn't know if 16 we could zoom out so we could have the 17 whole -- 18 THE WITNESS: Yeah, I can see it. I 19 can see the provision (e), Casey. 20 MR. DOHERTY: Okay. Then I'm okay. 21 I was more talking for you, Dusty. I 22 wanted everybody to be able to see the 23 document. Okay. Sounds good. 24 BY MR. MORRIS: 25 Q. Just let me try to clean this up a	Page 90 1 BH EQUITIES, LLC - D. MILLER 2 bit, Mr. Thomas. 3 Is it your understanding that 4 Mr. Chang's e-mail was effectively a 5 counterproposal to the one that you had made 6 earlier in the day on March 15th with respect 7 to the waterfall? 8 A. Yes. That's how we interpreted it. 9 Q. Okay. And is it your 10 understanding -- withdrawn. 11 Is it BH Equities' understanding that 12 this provision in Mr. Chang's e-mail was a 13 provision that was drafted by Highland? 14 A. Yeah, Highland is kind of the broad 15 counterparty perspective, yes. 16 Q. Okay. And, Mr. Chang's -- withdrawn. 17 Other than the fact that it's labeled 18 1.1 instead of 6.1, are you aware that 19 Mr. Chang's e-mail is -- was adopted verbatim 20 in the executed amended agreement? 21 MR. DOHERTY: Objection. 22 A. I would compare, but, yeah, I believe 23 it is -- it looks to be the language, the final 24 language. 25
Page 92 1 BH EQUITIES, LLC - D. MILLER 2 BY MR. MORRIS: 3 Q. And did Mr. Chang's section -- and 4 what's on Mr. Chang's e-mail, is it your 5 understanding that it ultimately became Section 6 6.1 of the amended agreement? And, again, I'm 7 happy to pull it up if you'd like because I 8 don't mean to test you. 9 A. Yeah, if you wouldn't mind pulling it 10 up, that would be great. 11 Q. Let's do that. Let's pull it up. 12 It's Exhibit 2. If we can pull up 6.1. 13 MR. DOHERTY: Mr. Morris, do you 14 think it would be helpful for Mr. Thomas 15 to print out the amended agreement during 16 this series of questions, or is this kind 17 of a one-off question? 18 MR. MORRIS: I think it's a one-off 19 question. 20 MR. DOHERTY: Okay. 21 MR. MORRIS: But if he wants to do 22 that, I don't mean to stop him. 23 MR. DOHERTY: I understand. 24 BY MR. MORRIS: 25 Q. Here's 6.1. You'll see that it's got	Page 93 1 BH EQUITIES, LLC - D. MILLER 2 five Sections, (a) through (e)? 3 A. Yep. 4 Q. You'll see that -- if we can go back 5 up to (a). You've got the percentages that are 6 set forth in Schedule A, 47.94 percent to HCRE, 7 46.06 percent to HCMLP, and 6 percent to BH. 8 Do you see that? 9 A. Yes. 10 Q. Okay. And then if we scroll down to 11 (e), it basically says, notwithstanding 12 everything that came before it, the first 13 amounts of distributable cash shall be deemed 14 distributed to each member in proportion to 15 amounts borrowed on behalf of SE Multifamily. 16 Is that a fair characterization? 17 A. Borrowed and then invested as equity 18 into the deal, yes. 19 Q. That's right. So that's the pay 20 KeyBank back first provision. Fair? 21 A. Yes. 22 Q. And then little (ii) there says that 23 after that's done, it's pro rata in proportion 24 to the members' respective capital accounts. 25 Do you see that?

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1 BH EQUITIES, LLC - D. MILLER

2 A. Yes.

3 Q. That's the return of capital
4 provision, correct?

5 A. Correct.

6 Q. And that's what BH Equities was
7 concerned about, correct?

8 A. Correct.

9 Q. And so Mr. Chang's proposal was
10 acceptable to BH Equities, correct?

11 A. Yes.

12 Q. BH Equities accepted Mr. Chang's
13 entire proposal with respect to Section 6.1,
14 correct?

15 A. Correct.

16 Q. Okay.

17 MR. MORRIS: All right. If we can go
18 to the next exhibit, Number 8, Bates
19 number 1140.

20 (Exhibit 8 marked.)

21 BY MR. MORRIS:

22 Q. Okay. So we're still on the 15th.
23 This was a busy day for you. At least it looks
24 that way. It's now 11:20 at night.

25 A. Uh-huh.

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1 BH EQUITIES, LLC - D. MILLER

2 A. That would be appreciated.

3 Q. Yep. Okay. So you'll see that at
4 9:24, you know, some version of the agreement,
5 Mr. Roby sent it to himself. Do you see that
6 at 9:24?

7 A. Yes. Yes, sorry.

8 Q. And if we can scroll up just a bit.
9 It looks like -- it's not clear to whom
10 Mr. Roby sent it to, but at 9:28, he had a
11 signed agreement at that time. And he asked
12 about working on a promote structure by the end
13 of April. Do you see that?

14 A. Uh-huh. Yes.

15 Q. So do you recall that there were two
16 different versions of the agreement that were
17 signed, or is that the slip page that you were
18 referring to earlier?

19 A. I don't recall exactly --

20 Q. Okay.

21 A. -- where version control was at that
22 point.

23 Q. Okay. So somebody responds, "Thanks,
24 Ben." It's hard to tell.

25 MR. MORRIS: But keep scrolling up.

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1 BH EQUITIES, LLC - D. MILLER

2 Q. And Mr. Broaddus sends to you and to
3 Mr. Roby, and he copies his colleagues, and he
4 attaches the agreement with the change, quote,
5 Dusty and I discussed, closed quote, and the
6 document was ready for execution. Do you see
7 that?

8 A. Yes.

9 Q. Is the change that you and
10 Mr. Broaddus discussed the change to 6.1 that
11 we just looked at in the two e-mails?

12 A. Yes.

13 Q. Okay. So that Mr. Broaddus is
14 informing BH Equities that after negotiating
15 Section 6.1 to the satisfaction of all members,
16 they were ready to sign; is that fair?

17 A. Yes.

18 Q. Okay.

19 (Exhibit 9 marked.)

20 MR. MORRIS: All right. Let's go to
21 the next exhibit, please. It's an e-mail
22 string with Bates number 277 to 282.

23 BY MR. MORRIS:

24 Q. And we can start at the bottom so
25 there's no confusion here.

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1 BH EQUITIES, LLC - D. MILLER

2 BY MR. MORRIS:

3 Q. Oh, I guess Mr. Broaddus did. He
4 says, "Thank you, Ben."

5 MR. MORRIS: Keep scrolling up.
6 BY MR. MORRIS:

7 Q. At 9:45, Mr. Chang sends what he says
8 is a fully executed agreement. Do you see
9 that?

10 A. Yes.

11 MR. MORRIS: Keep scrolling up.

12 BY MR. MORRIS:

13 Q. Okay. So a few days later, you sent
14 an e-mail to Mr. Chang and to Mr. Broaddus
15 where you noted a small issue in the agreement.
16 Do I have that correct?

17 A. Correct.

18 Q. Can you describe for me what that
19 small issue was?

20 A. I believe it was just the amount of
21 capital -- exact amount of capital contribution
22 was off slightly.

23 Q. And the piece that was off slightly
24 was the capital contribution amount set forth
25 in Schedule A for BH Equities; is that right?

1 BH EQUITIES, LLC - D. MILLER
2 A. Yes, that's my understanding.
3 Q. And so you or somebody acting on
4 behalf of BH Equities was looking at Schedule A
5 and noticed that the capital contribution
6 amount was off by a little bit; is that fair?
7 A. Yes.
8 Q. Okay. And you brought that to
9 Highland's attention, correct?
10 A. Correct.
11 Q. But BH Equities didn't identify
12 anything else about Schedule A that appeared to
13 be in error or by mistake at that time,
14 correct?
15 A. Correct.
16 Q. And let's -- let's just look to see.
17 So you identify the error, and then you say,
18 "As I understand it, several other items
19 related to the agreement will get discussed and
20 an amendment will be coming. Can we make that
21 update at the time of the amendment?"
22 Right? So it was BH Equities'
23 expectation that there would be an amendment;
24 is that right?
25 A. Yes.

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1 BH EQUITIES, LLC - D. MILLER
2 Q. And that amendment that BH Equities
3 was hoping to have made was specifically
4 limited to the question of whether the
5 6 percent residual interest would be increased;
6 is that right?
7 A. Yes.
8 Q. Okay. And is that -- was the promote
9 an attempt to get value through another means,
10 or is that related to the desire to get the
11 6 percent increase?
12 A. They were one and the same.
13 Q. Oh, okay. So -- so the amendment
14 that -- this is what you were referring to
15 earlier, right, that BH Equities agreed to
16 accept the 6 percent residual interest with the
17 hope and expectation that there would be an
18 amendment that would increase that amount,
19 right?
20 A. Right.
21 Q. And that's the only issue that BH
22 Equities wanted changed in the amended
23 agreement, correct?
24 MR. DOHERTY: Objection.
25

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1 BH EQUITIES, LLC - D. MILLER
2 BY MR. MORRIS:
3 Q. You can answer.
4 A. The only issue that I was aware of.
5 Again, I'm focused more on the economics,
6 though.
7 Q. Okay. Not -- there is no other
8 provision of the amended agreement that BH
9 Equities ever asked Highland to change except
10 for that number 6. Fair?
11 A. That's my understanding.
12 Q. So let's see what Mr. Broaddus says
13 in response. Okay. Right there. And he
14 suggests the slip page. Do you see that?
15 A. Yes.
16 Q. And he asks a question of Kim and
17 Matt at the bottom about whether the increase
18 in BH Equities' capital contribution would
19 change Highland's contribution or would it be
20 just additional capital to BH only. Do you see
21 that?
22 A. Yes.
23 Q. And the answer to that question was
24 that it was only going to change the capital
25 contribution made by BH Equities, correct?

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1 BH EQUITIES, LLC - D. MILLER
2 A. I believe so, yes.
3 Q. BH Equities wasn't intending to
4 change the capital contribution of any of the
5 Highland parties, correct?
6 A. No.
7 Q. And then -- and then Mr. Chang
8 weighed in in response and said that, you know,
9 quote, we are fine handling this with a slip
10 page if BH Equities, closed quote, is fine with
11 that. Do you see that?
12 A. Yes.
13 Q. And then Mr. Broaddus responds to
14 that and says that Highland would leave it up
15 to BH Equities because, as he understood it,
16 "we do plan to amend anyways; however, if you
17 want it slip paged in the meantime, we can do
18 that."
19 Have I read that correctly?
20 A. Yes.
21 Q. But no amendment was ever executed,
22 correct?
23 A. Correct.
24 Q. No agreement was ever reached on a
25 modification of any kind to BH Equities'

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1 BH EQUITIES, LLC - D. MILLER
2 residual interest in SE Multifamily, correct?

3 A. Correct.

4 Q. Do you know if a slip page was ever
5 inserted into the agreement to make the small
6 change that BH Equities identified to its
7 capital contribution?

8 A. I believe it was.

9 Q. So Highland was responsive to
10 BH Equities' request that Schedule A be changed
11 to accurately reflect BH Equities' capital
12 contribution; is that fair?

13 A. Yes.

14 Q. Did Highland ever ask BH Equities to
15 make any change to Schedule A at any time after
16 the agreement was executed on March 15, 2019?

17 A. There was correspondence as KeyBank
18 was paid back in that process and as other
19 assets were sold to get -- get things right as,
20 you know, contributions were paid back along
21 the way. So there was back-and-forth
22 correspondence. I don't know if it was
23 specific to update Schedule A, per se, but
24 there were iterative communications ensuring
25 that the capital that was put in was the

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1 BH EQUITIES, LLC - D. MILLER

2 A. It is.

3 Q. And is this again pointing out that
4 \$250 million of tranche B was considered
5 contributable capital by HCRE?

6 A. Yes.

7 Q. And by August of 2020, that \$250
8 million had been paid back; is that right?

9 A. Yes, that's my understanding.

10 Q. So that approximately \$39 million of
11 original capital that was credited to HCRE had
12 yet to be returned; is that right?

13 A. Yes, that's my understanding at that
time.

15 Q. Okay. And do you recall that in the
16 fall of 2020, there were discussions about the
17 return of capital?

18 A. Yeah. In that rough time frame, yes.

19 MR. MORRIS: Okay. Let's go to the
20 next exhibit, 482 through 485.

21 MR. DOHERTY: Mr. Morris, is it -- I
22 just wanted to ask about another break or
23 lunch break. I don't know, it's your
presentation, your deposition. I know
24 it's around noon. It's been an hour.

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1 BH EQUITIES, LLC - D. MILLER
2 capital that was paid back, et cetera.

3 Q. Okay. So -- so is it fair to say,
4 then, that Highland never asked BH Equities to
5 amend Schedule A, but there were discussions
6 about distributions and cash flow?

7 A. Yes.

8 MR. MORRIS: Okay. Let's go to the
9 next document, which is Exhibit 10. It's
10 Bates number 716.

11 (Exhibit 10 marked.)

12 BY MR. MORRIS:

13 Q. Have you seen this e-mail before,
14 sir?

15 A. Yeah, I believe it was part of our
16 discovery process.

17 Q. Okay. And do you see -- this is an
18 e-mail from Mr. Mulcahy of BH Management. Do I
19 have that right?

20 A. Yes.

21 Q. Okay. And do you see he refers to
22 tranche B debt?

23 A. Yes.

24 Q. That's a reference to the KeyBank
25 loan, correct?

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1 BH EQUITIES, LLC - D. MILLER

2 MR. MORRIS: I'm happy to take a
3 short break, but after that break, my goal
4 would be to take it to the finish line
5 because I don't think that I'll have a
6 whole lot more.

7 MR. DOHERTY: I can defer to -- do
8 you know how much -- the goal there --

9 MR. MORRIS: It will be another half
10 hour to an hour. So if you want to take a
11 short break, I'm happy to do that.

12 MR. DOHERTY: I could use a little --
13 I think -- do you want to do it now, or do
14 you want to go through a couple more?

15 MR. MORRIS: No, I think now is fine.
16 It's 1:07 here in New York. Let's just
17 come back at 1:15 and I'll, you know, try
18 to finish up within an hour.

19 MR. DOHERTY: Okay. 1:15 Central
20 Time, right?

21 MR. MORRIS: No. I don't want to
22 take a lunch break. I want to take --

23 MR. DOHERTY: Oh, no lunch break.
24 Okay.

25 MR. MORRIS: No.

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1 BH EQUITIES, LLC - D. MILLER

2 MR. DOHERTY: I just got a call from
3 my -- a personal call. I wanted to be
4 able to call it back. I can jump back on.

5 MR. MORRIS: You go take that --
6 Let's go off the record, please.

7 MR. DOHERTY: Yeah, sorry, off the
8 record.

9 (Recess taken 12:07 p.m. Central Time
10 - 12:17 p.m. Central Time.)

11 BY MR. MORRIS:

12 Q. So we're at Exhibit 11, Bates number
13 482 to 485. You know what, I'm going to
14 withdraw this exhibit. So just leave a blank
15 in the transcript -- yeah, just leave a blank
16 simply because it's redundant.

17 Let's shift topics, because I've only
18 got a little bit left here, to the topic of
19 distributions, Mr. Thomas. Do you recall that
20 that's one of the 30(b) (6) topics that we had
21 written about?

22 A. Yes.

23 Q. Okay. And I think we just confirmed
24 that in the fall of 2020, there were
25 discussions between Highland and BH Equities

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1 BH EQUITIES, LLC - D. MILLER

2 concerning the return of capital. Do you
3 remember that?

4 A. Yes.

5 Q. Okay.

6 (Exhibit 12 marked.)

7 MR. MORRIS: So let's put up what's
8 been marked as Exhibit 12, which is a
9 document with Bates number BH 192 to -94.
10 And if we could start at the bottom.

11 BY MR. MORRIS:

12 Q. Okay. Do you see that Mr. Mulcahy
13 sent an e-mail on Saturday, November 7th to
14 Bonner McDermett and Paul Broaddus with copies
15 to you and Phyllis Jones?

16 A. Yes.

17 Q. I don't think we've seen
18 Mr. McDermett's name before. Do you know who
19 Mr. McDermett is?

20 A. I don't know his exact title, but he
21 has been a correspondent with various
22 properties that we've worked with the Highland
23 entities before, kind of in an acquisition and
24 somewhat asset management type role.

25 Q. And how about Ms. Jones? Who is

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1 BH EQUITIES, LLC - D. MILLER

2 that?

3 A. She's the CFO of BH Companies.

4 Q. And was there discussions within BH
5 prior to November 7th concerning BH's desire to
6 have its capital returned?

7 A. Yes.

8 Q. And did BH Equities express that to
9 Highland in or before November 2020?

10 A. I don't know the first time it would
11 have been expressed, but, you know, it
12 wasn't -- it was a fairly known fact that we
13 would like to get our capital back.

14 Q. Okay. And the subject of this
15 e-mail, indeed, is called, quote, Unicorn
16 proposed distribution and detail schedules. Do
17 you see that?

18 A. Yes.

19 Q. Okay. And in the second paragraph,
20 Mr. Mulcahy references requested detail as well
21 as a, quote, updated distribution calculation.

22 Do you see that?

23 A. Yes.

24 Q. Do you have an understanding of what
25 a distribution calculation is?

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1 BH EQUITIES, LLC - D. MILLER

2 A. Yes.

3 Q. What's your understanding of that
4 term?

5 A. Just the -- the split of the next
6 dollars going out, who is going to get what
7 from -- from the next amount that would be
8 distributed.

9 Q. And did BH Equities maintain a
10 distribution calculation that it updated from
11 time to time as circumstances changed?

12 A. Yeah, based on our understanding of
13 the agreements, we did.

14 Q. And did Highland ask BH Equities to
15 do that, or is that something that BH Equities
16 just did of its own accord?

17 A. I believe we did it on our own
18 accord.

19 Q. And did BH Equities share their
20 distribution calculations with Highland from
21 time to time?

22 A. Yes.

23 Q. And, in fact, it wasn't attached to
24 this particular document, but Mr. Mulcahy wrote
25 to Highland on November 7th that he was

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1 BH EQUITIES, LLC - D. MILLER
2 attaching an updated distribution calculation.
3 Have I read that fairly?

4 A. Yes.

5 Q. And do you see that the updated
6 distribution calculation was for BH, HCRE, and
7 HCM?

8 A. I'd need to see the document, but
9 that would be in line with what I understand
10 from that document.

11 Q. Okay. And it's your understanding
12 that BH refers to BH Equities, correct?

13 A. Yes.

14 Q. And HCRE refers to HCRE Partners,
15 LLC, correct?

16 A. Yes.

17 Q. And HCM refers to Highland Capital
18 Management, L.P., correct?

19 A. Yes.

20 Q. And was it BH Equities' intention to
21 create a distribution calculation that was
22 consistent with the terms and provisions of the
23 amended agreement?

24 A. As we understood them, yes.

25 Q. Okay. And as BH Equities understood

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1 BH EQUITIES, LLC - D. MILLER
2 the terms and provisions of the amended
3 agreement on or around November 7th, it
4 prepared a distribution calculation that showed
5 the return of capital to each of the three
6 members of SE Multifamily, correct?

7 A. I -- I'd prefer to see the document
8 to state in the affirmative on that, but that
9 would be in line with, you know, my
10 understanding.

11 Q. And it's in line with what
12 Mr. Mulcahy wrote, correct?

13 A. Yes.

14 Q. There's no question in BH Equities'
15 mind that Mr. Mulcahy told Highland on
16 November 7, 2020 that it had an updated
17 distribution calculation for BH Equities, HCRE,
18 and HCMLP. Fair?

19 A. Yes.

20 Q. Okay.

21 MR. MORRIS: Let's -- let's go up to
22 the response to that, if we could scroll
23 up.

24 BY MR. MORRIS:

25 Q. And you'll see that Mr. McDermett

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1 BH EQUITIES, LLC - D. MILLER
2 responded the following Tuesday to that e-mail,
3 and he added Matt McGraner and DC Sauter to the
4 thread. Do you see that?

5 A. Yes.

6 Q. Do you know who Mr. Sauter is?

7 A. Yes.

8 Q. Who is Mr. Sauter?

9 A. He is legal counsel within NexPoint,
10 HCRE, those entities.

11 Q. Had BH Equities dealt with Mr. Sauter
12 on Project Unicorn before November 2020?

13 A. Yes. I don't know -- at one point he
14 was with Wick Phillips as well. And I don't
15 know exactly when he made his transition, but
16 he was involved either as outside counsel or
17 internal, you know, several times throughout
18 the deal.

19 Q. Okay. And Mr. McDermett told
20 Mr. Mulcahy and the others copied on the
21 e-mail, including yourself, that he presented
22 BH Equities' proposed distribution and set of
23 facts to Mr. McGraner and Mr. Sauter, correct?

24 A. Yes.

25 Q. Okay. And a couple of days later, BH

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1 BH EQUITIES, LLC - D. MILLER
2 Equities hadn't received a response, so
3 Mr. Mulcahy followed up, is that fair, on
4 November 12th, in the e-mail above, if we can
5 scroll up?

6 A. Yes, I see that.

7 Q. Okay. Okay. Let's see what the
8 response to that is. All right. I'm just
9 going to read the paragraph out loud, and then
10 I'm going to ask you some questions about it.

11 "On November 19th, 2020, Mr. McDermett told
12 you, Mr. Mulcahy, and Ms. Jones, among others,
13 quote, we have confirmed internally that we are
14 standing by our position that distributions may
15 be returned to BH and HCRE in order to
16 extinguish their debts. But the HCMLP
17 bankruptcy is temporarily inhibiting our
18 ability to distribute a return of equity at
19 this time. DC Sauter and our team are working
20 toward a solution there and we will get back to
21 you as soon as we have clearance to move
22 forward with additional distributions (return
23 of equity and profits)."

24 Have I quoted that correctly?

25 A. Yes.

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1 BH EQUITIES, LLC - D. MILLER

2 Q. Okay. Let's just take this in
3 pieces. At this moment in time, BH Equities
4 wanted their capital back, right?

5 A. Correct.

6 Q. And Highland was refusing to do that,
7 correct?

8 A. In whole, yes.

9 Q. Okay. And their position was that,
10 quote, distributions may be returned to B&H and
11 HCRE in order to extinguish their debts. Do
12 you see that?

13 A. Yes.

14 Q. Do you have an understanding as to
15 what debts are being referred to there?

16 A. I do.

17 Q. What debts are being referred to?

18 A. BH is part of our \$21 million --
19 \$21.2 or \$21.5 million. Had a \$15 million line
20 of credit or debt facility that was drawn to
21 make that investment, and I believe HCRE, it
22 was determined that the entirety of its, you
23 know, 39 or \$40 million amount was also
24 borrowed from NexVest Bank and that that's what
25 we were -- what extinguished their debts is

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1 BH EQUITIES, LLC - D. MILLER
2 that only amounts sufficient to repay
3 third-party debt would be permitted, correct?

4 A. Correct.

5 Q. Okay. And then the next sentence
6 says, "But the HCMLP bankruptcy is temporarily
7 inhibiting our ability to distribute a return
8 of equity at this time."

9 Do you see that?

10 A. Yes.

11 Q. Do you know what they meant by that?

12 A. No. Not -- we were not in the weeds,
13 so to speak, on that.

14 Q. Did BH Equities ever ask Highland or
15 anybody acting on behalf of HCRE why the HCMLP
16 bankruptcy would inhibit HCRE's ability to
17 distribute a return of equity in November 2020?

18 A. I don't know that we asked that
19 directly. We knew it was a tricky situation
20 and were somewhat deferential to it.

21 Q. When did BH Equities learn that
22 Highland was in bankruptcy?

23 A. I don't know a specific date, but it
24 would have been, you know, shortly after the
25 filing, as it started to make the public

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1 BH EQUITIES, LLC - D. MILLER
2 referring to.

3 Q. All right. Let me make sure that I
4 understand that. 15 of the \$21 million that
5 BH Equities put into the deal was borrowed from
6 a third party. Do I have that right?

7 A. That is correct.

8 Q. And BH Equities' understanding is
9 that the difference between HCRE's capital
10 contribution of approximately \$290 million and
11 the \$250 million that was borrowed from KeyBank
12 was also borrowed from a third party, that \$40
13 million. Do I have that right?

14 A. That's our understanding during this
15 time frame.

16 Q. And it was BH Equities' understanding
17 that Highland's position was that it would
18 permit the repayment of amounts sufficient to
19 allow BH and HCRE to repay in full the
20 third-party debt but nothing more; is that
21 right?

22 A. Yes.

23 Q. All right. So you're in November
24 2020, BH wants its entire initial capital
25 contribution returned, and they're told by HCRE

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1 BH EQUITIES, LLC - D. MILLER
2 rounds.

3 Q. And how did BH Equities learn of
4 that? Did they learn it from public
5 information, or did they learn it from anybody
6 acting on behalf of HCRE?

7 A. I don't recall specifically if we
8 were given a heads-up directly from HCRE or our
9 first knowledge was public information.

10 Q. You don't have a recollection of
11 anybody on behalf of HCRE specifically
12 informing BH Equities that HCMLP would be
13 filing for bankruptcy, do you?

14 MR. DOHERTY: Objection, form.

15 BY MR. MORRIS:

16 Q. You can go ahead.

17 A. I don't. And in my preparation, I
18 was not made aware of any contact. That
19 doesn't mean it didn't happen and I just wasn't
20 able to gather that info.

21 Q. I'll represent to you that HCMLP
22 filed for bankruptcy in October 2019. So my
23 question is whether BH Equities had any
24 communications with HCRE at any time prior to
25 November 2020 concerning any impact that the

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1 BH EQUITIES, LLC - D. MILLER
2 bankruptcy filing would have on HCRE's ability
3 to make distributions in accordance with the
4 amended agreement.

5 A. I don't know of anything that
6 specific. We were very focused at the time on
7 continuing the process to get KeyBank paid off
8 and then kind of taking it stride by stride,
9 given the complication of this very complex
10 transaction.

11 Q. Okay. Had anybody acting on behalf
12 of HCRE informed anybody acting on behalf of
13 BH Equities prior to November 19th, 2020 that
14 the HCMLP bankruptcy would have any impact at
15 all on the ability to make distributions?

16 MR. DOHERTY: Objection, form.

17 A. Could you repeat the question?

18 BY MR. MORRIS:

19 Q. Sure. BH Equities is being told in
20 this e-mail that, quote, the HCMLP bankruptcy
21 is temporarily inhibiting our ability to
22 distribute a return of equity at this time.

23 Do you see that?

24 A. Yes.

25 Q. Had anybody acting on behalf of HCRE

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1 BH EQUITIES, LLC - D. MILLER
2 ever told anybody acting on behalf of
3 BH Equities of that -- of that issue prior to
4 the time you received this e-mail?

5 MR. DOHERTY: Objection, form.

6 A. I don't know that there was anything
7 specifically said in that regard. I'm not
8 aware of anything that specific. We knew of
9 the bankruptcy from both -- from public -- or
10 not both, but from public forums, and we knew
11 that would have an impact, being that it was a
12 direct partner. I don't recall any -- or know
13 of any very specific conversation with HCRE
14 about what impact it was going to have.

15 BY MR. MORRIS:

16 Q. Did anybody from HCRE ever describe
17 for BH Equities the impact that the bankruptcy
18 would have on SE Multifamily or HCRE's ability
19 to make distributions prior to the sending of
20 this e-mail?

21 MR. DOHERTY: Objection, asked and
22 answered.

23 You may answer, Mr. Thomas, the
24 question.

25 A. Okay. Not to my knowledge.

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1 BH EQUITIES, LLC - D. MILLER
2 BY MR. MORRIS:
3 Q. Okay. And then in the next sentence
4 it says that DC Sauter and our team are working
5 toward a solution.

6 Do you see that?

7 A. Yes.

8 Q. Did they ever explain -- did anybody
9 acting on behalf of HCRE ever explain to
10 BH Equities what the solution was?

11 A. No. Not to my knowledge.

12 Q. Did BH Equities ever ask Highland or
13 HCRE what the solution was that Mr. Sauter was
14 working towards?

15 A. I don't know if we had a specific
16 question or conversation about that within the
17 firm.

18 Q. So if we scroll up, you'll see that
19 Mr. McDermott, I guess, re-sent his e-mail with
20 an attachment. I don't believe that was
21 attached to the document that we received. But
22 in any event, Mr. Mulcahy responded at the top
23 of the e-mail chain. And is it fair to say
24 that in substance --

25 MR. MORRIS: I think if we could keep

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1 BH EQUITIES, LLC - D. MILLER
2 scrolling up. Yeah.

3 BY MR. MORRIS:

4 Q. Is it fair to say in substance that
5 BH Equities was willing to accept the
6 distributions so that it could repay the
7 third-party debt that it had incurred but still
8 wanted to get the remaining funded capital out
9 of SE Multifamily?

10 A. I might say it slightly differently.

11 Q. Okay.

12 A. HCRE was the manager.

13 Q. Yep.

14 A. And they instructed us to do
15 something as the manager of the entity, and
16 that was done. But, yes, as it's stated
17 clearly here, we hope to find a solution to get
18 our remaining 6.2 million of capital out as
19 well.

20 Q. Okay.

21 MR. MORRIS: Let's go to the next
22 exhibit, please, Exhibit 13.

23 (Exhibit 13 marked.)

24 BY MR. MORRIS:

25 Q. So this is seven months later.

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1 BH EQUITIES, LLC - D. MILLER
2 Exhibit 13 is a two-page document Bates
3 numbered BH 173 to 174. The second page is
4 just an icon. And at that e-mail at the bottom
5 of the first page, Mr. Mulcahy is raising the
6 exact same issue that he had raised seven
7 months earlier, and that is BH Equities wanted
8 the return of its capital; is that fair?
9 A. Yes.
10 Q. Okay. And, in fact, that
11 \$6.258 million that he refers to in his e-mail,
12 that's the same amount that he referred to in
13 his e-mail back in November of 2020, because no
14 capital had been distributed since that time,
15 correct?
16 A. Correct.
17 Q. And BH Equities pointed out that SE
18 Multifamily had \$8 million in its bank account,
19 and so it wanted every dollar of invested but
20 unreturned capital repatriated to it, correct?
21 A. Yes.
22 Q. And if you scroll up, Mr. McDermett
23 again calls others to the table, in this case
24 Mr. McGraner and Rob Harris. Do you see that?
25 A. Yes.

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1 BH EQUITIES, LLC - D. MILLER
2 had all of its capital returned or at least
3 credited to it?
4 A. I believe -- my apologies. We're
5 talking about HCRE, correct?
6 Q. Yes.
7 A. I believe it was in 2020 when they
8 had received all of their invested capital
9 back.
10 Q. So -- and is that because all of
11 their invested capital, to the best of
12 BH Equities' understanding, was borrowed from
13 third parties?
14 A. Yes.
15 Q. And so the deal was to repatriate all
16 capital contributions that were sourced from
17 third parties, correct?
18 A. Yes.
19 Q. So it's BH Equities' understanding
20 that HCRE did not put in any of its own capital
21 in connection with the funding of
22 SE Multifamily, correct?
23 A. Its own capital being that that
24 wasn't borrowed from a third party, yes, that's
25 correct.

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1 BH EQUITIES, LLC - D. MILLER
2 Q. And at the top, Mr. McGraner -- no,
3 withdrawn.
4 At the top, Mr. McDermott informs
5 Mr. Mulcahy that Mr. McGraner has approved the
6 repatriation of the remaining unpaid capital to
7 BH Equities. Do I have that right?
8 A. Yes.
9 Q. And so, in fact, in June of 2021,
10 BH Equities got the last of its capital
11 investment out of SE Multifamily, correct?
12 A. Yes.
13 Q. Does SE -- withdrawn.
14 Does BH Equities know whether all of
15 HCRE's original capital contribution has been
16 repatriated?
17 A. We believe it has at that point.
18 Q. Does BH Equities know whether the
19 capital contribution made by Highland Capital
20 Management was returned to it?
21 A. As of the date of this e-mail, we
22 don't believe it has.
23 Q. Do you know when HCRE's capital
24 contribution was repatriated in full? When was
25 either the month or at least the year when HCRE

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1 BH EQUITIES, LLC - D. MILLER
2 Q. Okay. And that's why it got paid --
3 well, withdrawn.
4 That's why it was credited with the
5 return of all of its capital before
6 BH Equities; is that fair?
7 A. Yes.
8 MR. DOHERTY: Mr. Morris -- and you
9 can tell me -- I believe that the witness
10 misunderstood a question a couple back
11 about Highland Capital. I can --
12 MR. MORRIS: Sure, go ahead.
13 MR. DOHERTY: -- identify it now.
14 Okay. You asked about whether he
15 knew Highland Capital had been -- had
16 their capital returned, the 49,000; is
17 that right?
18 MR. MORRIS: Yep.
19 MR. DOHERTY: And then I think
20 Mr. Thomas said as of -- he, I think,
21 added a qualifier, as of the date of this
22 e-mail it hadn't.
23 MR. MORRIS: Right.
24 MR. DOHERTY: But did you mean
25 what -- so was that the intent of your

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1	BH EQUITIES, LLC - D. MILLER	1 BH EQUITIES, LLC - D. MILLER
2	question, or was it had it been returned	2 A. Yes.
3	at all?	3 Q. And that's both the third-party debt
4	MR. MORRIS: I appreciate that.	4 as well as the original sourced funding,
5	Well, let me try and clean that up, Casey.	5 correct?
6	BY MR. MORRIS:	6 A. Yes.
7	Q. Mr. Thomas, as of the time that --	7 Q. But HCMLP is the only member who had
8	withdrawn.	8 no capital returned to it, at least as of June
9	Do you know whether HCMLP's \$49,000	9 2021, correct?
10	was original out-of-pocket capital or whether	10 A. Correct.
11	HCMLP borrowed that money as that third-party	11 Q. Do you know why HCRE and BH Equities
12	debt?	12 was made whole by June 2021 but HCMLP was not?
13	A. I don't know for certain, as we	13 A. That was how we were directed to make
14	haven't traced the source, but we're led to	14 payments by the manager.
15	believe that it was not borrowed capital.	15 Q. And who on behalf of the manager
16	Q. Okay. So in 2020, all borrowed	16 directed you to make the payments in that
17	capital was paid back in full, correct?	17 manner?
18	A. Yes.	18 A. We coordinated through Mr. McDermett,
19	Q. And to the best of BH Equities'	19 but it was -- as you can see with his e-mail
20	knowledge, all of HCRE's capital was borrowed,	20 exchange, I believe the discussion was had with
21	correct?	21 Mr. McGraner, potentially others.
22	A. Yes.	22 Q. Did anybody acting on behalf of the
23	Q. And by June 2021, all of BH Equities'	23 manager explain to BH Equities why it was not
24	capital contribution was paid back or credited	24 instructing BH Equities to make HCMLP whole?
25	in full, correct?	25 A. No.
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1	BH EQUITIES, LLC - D. MILLER	1 BH EQUITIES, LLC - D. MILLER
2	Q. Did BH Equities ask that question?	2 Q. And do you see that this is a
3	A. I don't believe so.	3 letter -- the first page of this exhibit is a
4	Q. All right. Let's go to -- just two	4 letter from Barker Viggato dated September 9,
5	more documents, sir. Let's start with some tax	5 2020?
6	returns.	6 A. Yes.
7	(Exhibit 14 marked.)	7 Q. Okay. And can you confirm that
8	MR. MORRIS: Can we go to Exhibit 14,	8 BH Equities received this letter with the
9	which is BH 10 through 75.	9 attachments in or around September 2020?
10	BY MR. MORRIS:	10 A. Yes.
11	Q. Are you aware that BH Equities	11 Q. All right. Do you know who was
12	produced in response to the subpoena	12 responsible for communicating with Barker
13	SE Multifamily's tax returns, including K-1s	13 Viggato on behalf of SE Multifamily? Was that
14	for 2019?	14 the manager's job?
15	A. Yes.	15 A. Yes.
16	Q. And did you review those in	16 Q. Okay. I'm not asking -- do you know
17	preparation for today's deposition?	17 who on behalf of the manager was primarily
18	A. Yes.	18 responsible for communicating with Barker
19	Q. And the document that's on the screen	19 Viggato?
20	is a cover letter. Do you see that?	20 A. I do not.
21	A. Yes.	21 Q. Is it BH Equities' understanding that
22	Q. Is BH Equities aware that a firm	22 under the terms of the amended agreement that
23	called Barker Viggato prepared the tax returns	23 the manager was responsible for causing SE
24	for SE Multifamily?	24 Multifamily's tax returns to be prepared?
25	A. Yes.	25 A. Yes.

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1 BH EQUITIES, LLC - D. MILLER
2 Q. Okay. Is it BH Equities'
3 understanding that the manager was responsible
4 for providing the information that Barker
5 Viggato needed to prepare SE Multifamily's tax
6 returns?

7 A. Yes.

8 Q. Has Barker Viggato been the firm that
9 has prepared SE Multifamily's tax returns since
10 SE Multifamily was formed in August of 2018?

11 A. I don't recall specifically if they
12 did the 2018 return. I do know they did '19
13 and '20.

14 Q. I appreciate the specificity.

15 So we can take a look at anything you
16 want in this document. If we turn to the next
17 page, we'll see that it says 2019 Tax Return
18 Filing Instructions. Do you see that?

19 A. Yep.

20 Q. Do you know if SE Multifamily's tax
21 returns for 2019 were ever amended?

22 A. Not to my knowledge.

23 Q. Did BH Equities have any discussions
24 with anybody at any time over whether
25 SE Multifamily's 2019 tax returns should be

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1 BH EQUITIES, LLC - D. MILLER

2 BY MR. MORRIS:

3 Q. Do you see 19a refers to
4 distributions of cash and marketable
5 securities?

6 A. Yes.

7 Q. And the number there is \$267 million?
8 Do you see that?

9 A. Yes.

10 Q. Is that the return of the third-party
11 debt that we've been talking about, if you
12 know?

13 A. The majority of it would have been,
14 yes.

15 Q. Okay. Do you know what portion of
16 that would have related to a distribution other
17 than the repayment of third-party debt?

18 A. I don't specifically without, you
19 know, referencing the work papers or things
like that.

21 Q. Okay. Hold on one sec.

22 Q. Do you know, who authorizes the
23 making of distributions on behalf of SE
24 Multifamily?

25 A. The manager would do that.

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1 BH EQUITIES, LLC - D. MILLER

2 amended?

3 A. Could you scroll in here? There
4 should be the allocation of BH Equities in
5 this. And in one of the years -- and I don't
6 recall if it was '19 or '20 -- we did have a
7 question about, you know, allocations. So...

8 Q. Okay. And would that be the K-1?

9 A. Yes.

10 Q. Okay. We'll get to that in just a
11 moment, and then we'll come back to the
12 question of amendment at that time.

13 Are you aware that K-1s for each of
14 the members of SE Multifamily were included in
15 the package of documents prepared by Barker
16 Viggato?

17 A. Yes.

18 Q. Did BH Equities -- withdrawn.

19 Do you know whether any K-1 that was
20 issued to any member of SE Multifamily was ever
21 amended?

22 A. Not to my knowledge.

23 MR. MORRIS: Let's go to Bates number
24 17, please. And if we could scroll down
25 to line 19a. Yeah, there you go.

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1 BH EQUITIES, LLC - D. MILLER

2 Q. And who does BH Equities understand
3 the manager to be?

4 A. HCRE Partners.

5 Q. Let's go to Bates number 21, please.

6 MR. DOHERTY: When you're saying
7 Bates 21, Mr. Morris, is that our Bates
8 numbering? Okay, thank you. Okay.

9 BY MR. MORRIS:

10 Q. So this is Schedule B-1. Do you see
11 that?

12 A. Yes.

13 Q. And Highland Capital Management, L.P.
14 is identified as an entity owning 50 percent or
15 more of the partnership. Do you see that?

16 A. Yes.

17 Q. And Highland Capital Management,
18 L.P.'s interest is fixed at 94 percent. Do you
19 see that?

20 A. Yes.

21 Q. And is it BH Equities' understanding
22 that that 94 percent is a reference to that
23 Section 6.4 where 94 percent of the profits and
24 losses are allocated to HCMLP?

25 A. Yes.

1 BH EQUITIES, LLC - D. MILLER 2 A. Correct. 3 Q. And nobody ever suggested that either 4 HCMLP's or HCRE's or BH Equities' 2019 K-1s 5 were incorrect in any way, correct? 6 A. Correct. 7 Q. Okay. Do you see there's a 8 distribution there in Box 19 of \$46,000? 9 A. Yes. 10 Q. Do you have any idea why BH Equities' 11 K1 for 2019 shows that it received a 12 distribution of \$46,926? 13 A. No, other than seeing there's a 14 footnote A or a notation A next to it, which 15 may have more description. 16 MR. DOHERTY: Mr. Morris, can you 17 show the witness A? May I ask that? 18 MR. MORRIS: Yeah, I'm looking for 19 it. I actually -- if we could scroll 20 down, the next -- the next page is Code Z. 21 The next page -- I don't see it there. 22 Yeah, I don't see it. So I'll just move 23 on. I can only work with what I have. 24 BY MR. MORRIS: 25 Q. And then let's go to Bates number 70,	Page 142 1 BH EQUITIES, LLC - D. MILLER 2 please. And this is the K-1 for Liberty, 3 correct? 4 A. Yes. 5 Q. And they have zero percent capital at 6 the beginning of the year and at the end of the 7 year because they didn't make an equity 8 investment in SE Multifamily, correct? 9 A. It was a preferred equity investment, 10 which would be treated differently. 11 Q. Correct. And they got distributions 12 of approximately \$17 million, as reflected in 13 paragraph -- in Section 19, because they were 14 preferred holders and they were entitled to get 15 paid first, correct? 16 A. Yes. 17 Q. Do you know why they were allocated 18 3.6 percent of the profits and losses in 2019? 19 A. I don't, no. 20 Q. Did you know that they were allocated 21 3 percent of the profits and losses in 2019 22 before now? 23 A. Only from reviewing the documentation 24 and things. 25 Q. No agreement was ever -- no amendment
Page 144 1 BH EQUITIES, LLC - D. MILLER 2 to the amended agreement was ever made to 3 change the allocation set forth in Section 6.4, 4 right? 5 A. Not that I'm aware. 6 MR. MORRIS: Let's go to the last 7 exhibit, 15, BH 76 to 78. 8 (Exhibit 15 marked.) 9 BY MR. MORRIS: 10 Q. And do you see this is BH Equities' 11 K-1 for 2020? 12 A. Yes. 13 Q. All right. Let's just scroll down a 14 little bit. It's just a two-page -- I guess 15 it's a three-page document. 16 In looking at it, does it refresh 17 your recollection -- I had asked you earlier 18 whether there was ever any discussion at any 19 time about filing an amendment to any of SE 20 Multifamily's tax returns or the K-1s at issue. 21 Do you remember that question? 22 A. Yes, I remember that question. 23 Q. And I think you testified that there 24 may have been? 25 A. We had questions. If you could	Page 144 1 BH EQUITIES, LLC - D. MILLER 2 scroll up on this. We were curious as to why 3 there was no allocation in Box 1 or 2 to 4 BH Equities in 2020. 5 Q. Oh, okay. So the question was why 6 did BH Equities not receive any allocation of 7 ordinary business income or net rental income 8 from the real estate; is that right? 9 A. Correct. 10 Q. Did BH Equities ever get an answer to 11 that question? 12 A. I don't believe we did. 13 Q. But BH Equities' allocation of 14 profits and losses doesn't seem to have 15 changed, right? It's the same 5.78 percent as 16 it was in 2019, at least according to the K-1s, 17 correct? 18 A. Correct. 19 Q. Do you know if this K-1 was reported 20 to the IRS? 21 MR. DOHERTY: Objection, form. What 22 is reported? Was it filed, John? 23 MR. MORRIS: Yeah, that's a fair 24 question. 25

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1 BH EQUITIES, LLC - D. MILLER

2 BY MR. MORRIS:

3 Q. Yeah. Do you know if this K-1 was
4 ever filed with the IRS?

5 A. I don't. It would have been the
6 manager's responsibility to file the tax return
7 on behalf of the entity, and then BH Equities,
8 given our complex nature, you know, has a very
9 complicated tax return. So its information
10 would have been used in the broader
11 BH Equities' filing, but we wouldn't have sent
12 this directly attached to our tax return, per
13 se.

14 Q. Okay. I appreciate the
15 clarification.

16 Did BH Equities rely on the
17 information in this K-1 to prepare its tax
18 returns for 2020?

19 MR. DOHERTY: Object. I don't -- I'm
20 just making this objection in caution. I
21 think this is a little outside the scope.
22 I mean, I know if you're going places, but
23 if this involves, like, tax advice from
24 attorneys or something, then don't go into
25 detail on that. I just wanted to -- it's

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1 BH EQUITIES, LLC - D. MILLER

2 taxes.

3 Q. Why did BH Equities take a different
4 course? What does that mean?

5 MR. DOHERTY: Objection, form.

6 BY MR. MORRIS:

7 Q. You can answer.

8 MR. DOHERTY: Well, you can answer --
9 again, I think this is outside the scope,
10 but if it involves outside attorney's
11 advice about your taxes, then you need to
12 be careful if you need to -- if you think
13 you're getting attorney advice, then you
14 need to be careful.

15 A. Yeah, I think it would be just
16 related to internal decision making.

17 BY MR. MORRIS:

18 Q. Internal decision making is not a
19 reason to not share the answer with me.

20 MR. DOHERTY: Mr. Thomas, if it's
21 legal counsel, then --

22 MR. MORRIS: Then you should say so.
23 Then you should say so.

24 MR. DOHERTY: Right.

25 If you can answer without that, then

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1 BH EQUITIES, LLC - D. MILLER

2 fair. If there's a question pending, you
3 can answer the question.

4 BY MR. MORRIS:

5 Q. Look, the question is really simple,
6 Mr. Thomas. Is this a draft document, or is
7 this something that BH Equities has actually
8 relied upon in the preparation of its tax
9 returns for 2020?

10 A. Those aren't necessarily the same
11 question. Or it's not --

12 Q. I understand. I'm trying to clean it
13 up and make it as simple as I can to show
14 you --

15 A. Well, there's not -- sorry to be
16 difficult. Those aren't the only two
17 possibilities. And my understanding is
18 we may -- we may have taken a different stance
19 as it is our tax return. So that's why I'm --
20 I'm saying it was not delivered to us as a
21 draft so that we believed this was the K-1
22 delivered to us, even though we had questions.
23 I can't affirm -- I can't say that we
24 relied on it because I believe we took a
25 different course, as is our right with our

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1 BH EQUITIES, LLC - D. MILLER

2 you can answer the question.

3 A. We just took a more conservative
4 approach and allocated 6 percent of the net
5 income into our tax liability, given the
6 complexity of our return.

7 BY MR. MORRIS:

8 Q. I just want to make sure that I
9 understand correctly, that notwithstanding
10 what's stated on this K-1, BH Equities made the
11 decision to allocate to itself 6 percent of
12 SE Multifamily's profits in 2020; is that
13 right?

14 A. For the purposes of taxes, yes.

15 Q. Yes. Okay. Did BH Equities ever
16 discuss that decision with anybody acting on
17 behalf of HCRE?

18 A. No.

19 Q. Did BH Equities ever discuss that
20 decision with anybody acting on behalf of
21 Barker Viggato?

22 A. No.

23 Q. Did BH Equities ever discuss this K-1
24 with anybody at Barker Viggato?

25 A. I don't know for sure. I know there

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1 BH EQUITIES, LLC - D. MILLER
2 was an e-mail request -- or an e-mail ask on
3 this K-1, and I don't know for sure if Barker
4 Viggato people were included or not on that or
5 if it was just directed to HCRC.

6 Q. Okay.

7 MR. MORRIS: If we can scroll down
8 just a little bit.

9 BY MR. MORRIS

10 Q. Do you see Box L?

11 A. Yes.

12 Q. And there's an ending capital account
13 of approximately \$8.5 million. Do you see
14 that?

15 A. Yes.

16 Q. Since all of the original funded
17 capital has been returned with the exception of
18 Highland's \$49,000, is it fair to say that that
19 number, \$8.5 million, equals approximately
20 6 percent of the capital accounts among the
21 members of SE Multifamily?

22 A. The tax capital account, yes. That
23 would be my understanding.

24 Q. Okay. So that -- would it be
25 BH Equities' expectation that HCMLP's capital

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1 BH EQUITIES, LLC - D. MILLER
2 account would be approximately five to six
3 times bigger than that because they have a
4 46.06 percent residual interest?

5 A. Not necessarily.

6 Q. Is there a relationship between
7 BH Equities' capital account and the capital
8 accounts of the other members, given that all
9 of the original capital contributions have been
10 paid in full but for HCMLP?

11 MR. DOHERTY: Objection. I think
12 that mischaracterizes --

13 MR. MORRIS: You've got the -- you've
14 got the objection. I'm going to cut you
15 off this time.

16 A. Relationship, yes. But it's not a
17 direct linear relationship given how tax --
18 given how tax remedies work and allocations of
19 profit and loss, capital, those things. So
20 it's not a simple linear relationship.

21 BY MR. MORRIS:

22 Q. All right. Let's shift gears now,
23 last topic, no documents. Actually, just hold
24 on one second.

25 Okay. Let's just shift gears and

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1 BH EQUITIES, LLC - D. MILLER
2 finish this up. If we could go back to the
3 subpoena, which I think was Exhibit 1. Again,
4 page 2 of the exhibit, PDF page 9 of 13. And I
5 know I asked a couple of questions, but I said
6 we'd come back to it.

7 So we're on topic 4, and remember I
8 defined what's in the parenthetical there as
9 HCRC's contention. Do you remember that?

10 A. Yes.

11 Q. Okay. Really, I don't have a lot
12 here. Do you recall when BH Equities first
13 learned of HCRC's contention as set forth in
14 topic 4?

15 A. I believe it would have been, I don't
16 know, a few days after filings or something
17 along those lines, as we tried to pay
18 attention.

19 Q. When do you think it was?

20 A. Shortly after the filing of it, once
21 it was on the public record.

22 Q. And how did -- how did BH Equities
23 learn of the contention?

24 A. I think we'd been an interested party
25 in the case as it relates to SE Multifamily, so

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1 BH EQUITIES, LLC - D. MILLER
2 we were paying attention to the court records
3 and things.

4 Q. Did BH Equities have any source of
5 information other than court records by which
6 it learned of HCRC's contention?

7 A. I don't believe so.

8 Q. Okay. So is it fair to say that to
9 the best of your recollection, BH Equities
10 relied exclusively on what was on the court
11 record in order to learn about HCRC's
12 contention?

13 A. To the best of my knowledge.

14 Q. Okay. Do you know whether BH
15 Equities has ever discussed this contention
16 with anybody at HCRC?

17 A. Not to my knowledge.

18 Q. Do you know if anybody acting on
19 behalf of BH Equities has ever communicated
20 with anybody at HCRC concerning the contentions
21 set forth in topic 4?

22 A. Not to my knowledge.

23 Q. Do you know whether HCRC, in its
24 capacity as the manager, has ever done anything
25 to address the mistake that's described in its

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1 BH EQUITIES, LLC - D. MILLER
2 contention other than file with a proof of
3 claim?

4 A. Not to my knowledge. I don't believe
5 so.

6 Q. And also with -- they also, at least
7 in November 2020, decided to withhold --
8 withdrawn.

9 Other than responding to the
10 subpoena, has BH Equities done anything in
11 response to learning about the contentions set
12 forth in paragraph -- topic 4?

13 MR. DOHERTY: Objection. If this --
14 if this involves legal discussions, then
15 you are not to answer, but you can follow
16 the question.

17 A. I don't believe we've taken any --
18 any business action in regard to this
19 contention.

20 BY MR. MORRIS:

21 Q. Okay. Does BH Equities have a view
22 as to whether the contention is fair and
23 accurate?

24 MR. DOHERTY: Objection.

25

1 BH EQUITIES, LLC - D. MILLER
2 SE Multifamily improperly allocated the
3 ownership percentages of the members thereto
4 due to mutual mistake, lack of consideration,
5 and/or failure of consideration?

6 A. Yes. We do not have a position on
7 that.

8 MR. MORRIS: I have no further
9 questions.

10 MR. DOHERTY: Mr. Morris, I'd like to
11 ask one or two questions on redirect to
12 clarify something. Is that okay to do it
13 now, or would you like a --

14 MR. MORRIS: No, I think you should
15 do it now.

16 EXAMINATION

17 BY MR. DOHERTY:

18 Q. Mr. Thomas, I'm going to ask you a
19 couple of questions as if we were in court, you
20 know, as you were with Mr. Morris.

21 During the testimony, I believe --
22 I'm unsure how it came about exactly, but you
23 were asked questions that did Highland Capital
24 Management ever receive their capital
25 contribution back, and you answered at one

1 BH EQUITIES, LLC - D. MILLER

2 BY MR. MORRIS:

3 Q. Well, let me ask a different
4 question. Does BH Equities believe that the
5 organizational documents relating to
6 SE Multifamily improperly allocate the
7 ownership percentages of the members thereto
8 due to mutual mistake, lack of consideration,
9 and/or failure of consideration?

10 MR. DOHERTY: Objection.

11 BY MR. MORRIS:

12 Q. You can answer.

13 MR. DOHERTY: Form.

14 You can answer, Mr. Thomas.

15 A. I don't know that I can answer
16 specifically because, again, we viewed it as a
17 bilateral negotiation at the time, and that
18 would take into account the parties'
19 consideration that we just didn't have -- we
20 weren't privy to nor frankly had an interest in
21 knowing at the time.

22 BY MR. MORRIS:

23 Q. Is it fair to say that BH Equities
24 does not have a position as to whether or not
25 the organizational documents relating to

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1 BH EQUITIES, LLC - D. MILLER
2 point that they had not received it as of June
3 9th, 2021; is that correct?

4 A. That is correct.

5 Q. Were you referring to the \$49,000 in
6 capital that's reflected on Schedule A?

7 A. Yes.

8 Q. Has Highland Capital, to BH's
9 knowledge, now received that \$49,000?

10 A. Yes.

11 MR. DOHERTY: No further questions.

12 MR. MORRIS: I have nothing further.

13 MR. GAMEROS: No questions, either.

14 (Discussion off the record.)

15 MR. DOHERTY: And for the transcript,
16 now that we're on the phone, is that
17 something where y'all will -- we'll get it
18 e-mailed to us for checking it for errata
19 and everything --

20 MR. MORRIS: Sure.

21 MR. DOHERTY: -- Ms. McMoran?

22 THE REPORTER: Yes, for read and
23 sign, we'll send it to you, Mr. Doherty.

24 Mr. Gamaros, did you need a copy of
25 this one, too?